

1928-1929
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AGE OF CONSENT COMMITTEE

EVIDENCE

1928-1929

Volume VIII

**Oral Evidence and Written Statements
of
Witnesses from Benares and Allahabad
(United Provinces).**



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BENARES.

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2. **Pandit Gopi Nath Kaviraj, Principal, Sanskrit College, Benares.**
3. **Babu Bhagwan Das, M.A., Sigwa, Benares.**
4. **Chaudhri Mukhtar Singh, M.L.A., Pleader, Meerut City.**
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6. **Mahamahopadhyaya Pandit Lakshman Shastri Dravid, Benares.**
7. **Mr. B. Ajodhyadas, Bar.-at-Law, Gorakhpore.**
8. **Khan Bahadur Makhbul Alam, Advocate, High Court, Benares.**
9. **Khan Bahadur Mohd. Ismail, Bar.-at-Law, Gorakhpore.**
10. **Mr. Misreelal Raidani, Mirzapur.**
11. **Rai Bahadur Jawahar Lal Sinha, Rais, Gorakhpore.**
12. **Mr. Amar Nath Ahir, Ahir Sabha, Benares.**
13. **Rai Krishna Ji, Rais, Benares.**

ALLAHABAD.

1. **Dr. (Miss) Commissariat, Allahabad.**
2. **Pandit Hirdaya Nath Kunzru, Servant of India Society, Allahabad.**
3. **Khan Bahadur Maulvi Wilayat Hussain, Allahabad.**
4. **Miss Yashoda Devi, Ayurvedic Medical Practitioner, Allahabad.**
5. **The Hon'ble Mr. Justice Choudhri Niamat Ullah, High Court, Allahabad.**
6. **Mrs. Aree Dalal, Vice-President, Imperial Purdah Club, Allahabad.**
7. **Mrs. Banerjee, Allahabad.**
8. **Dr. Shafaat Ahmed Khan, M.L.C., University Professor of History, Allahabad.**
9. **Mr. Iqbal Ahmed, Advocate, High Court, Allahabad.**
10. **Mr. K. P. Mathur, D.P.H., Assistant Director of Public Health, Allahabad.**
11. **Rai Bahadur Behari Lal, M.L.C., President, District Board, Allahabad.**
12. **Mr. Nurul Hasan, Vakil, High Court, Vice-Chairman, Municipal Board, Allahabad.**
13. **Miss C. R. Pooviah, B.A., Lady Principal, Crosthwaite Girls' College, Allahabad.**
14. **District Medical Officer of Health, Allahabad.**

THE AGE OF CONSENT COMMITTEE.

QUESTIONNAIRE.

NOTE.—The queries below may be answered wholly or in part according to the sphere of experience of each person answering. Persons willing to answer should send their written replies so as to reach the Secretary, Age of Consent Committee, Simla, by the 15th August at the latest.

1. Is there any dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code?

2. What are the circumstances which in your opinion justify—

- (1) retaining the law of the Age of Consent as it is, or
- (2) making an advance on the present law?

3. Are crimes of seduction or rape frequent in your part of the country? Has the amendment of the law made in 1925 raising the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside the marital state, or the improper seduction of girls for immoral purposes? If not, what measures would you propose to make the law effective?

4. Has the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husbands within the prescribed age limit—

- (1) by postponing the consummation of marriage,
- (2) by stimulating public opinion in that direction, or
- (3) by putting off marriage beyond 13?

If not, what steps would you propose to make it effective?

5. What is the usual age at which girls attain puberty in your part of the country? Does this differ in different castes, communities or classes of society?

6. Is cohabitation common in your part of the country among any class or classes of people—

- (1) before puberty,
- (2) soon after puberty,
- (3) before the girl completes 13 years?

Do any of these cases come to court?

7. Do you attribute the practice of the early consummation of marriage before or at puberty, wherever it exists, to religious injunction? If so, what is the authority for and nature of that injunction, and does that authority prescribe any, and what penalty for its breach?

8. Is 'Gaona' or 'Garbhadan' ceremony usually performed in your part of the country? If so, does it coincide with or is it anterior to the consummation of marriage? Is it performed generally after the attainment of puberty and how soon after it?

9. Do you consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage? If not, at what age and how long after puberty may a girl's physical development be considered to be enough to justify such consummation without injury to her own health and that of her progeny?

10. At what age would a girl in India be competent to give an intelligent consent to cohabitation with a due realization of consequences?

11. During your experience, professional or otherwise, have you come across cases in which cohabitation before puberty, or after puberty but before full physical development of a girl resulted in injury to her health or body or prejudicially affected her progeny? If any, give details of age and injury sustained.

12. Do you consider early consummation and early maternity responsible for high maternal and infantile mortality, or for any other results vitally affecting the intellectual or physical progress of the people?

13. Has there been any further development of public opinion in your part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925? If so, is it general or confined only to certain classes?

14. Do women in your part of the country favour early consummation of marriage for their children?

15. Have any difficulties been experienced in determining the age of girls in connection with offences under sections 375 and 376 of the Indian Penal Code? What measures would you suggest to remove or minimise these difficulties?

16. Would the difficulty or margin of error in determining the age be materially reduced or minimised if the Age of Consent is raised to 14 years or above?

17. Would you separate extra-marital and marital offences into different offences? If so, what is the nature and amount of maximum punishment you would prescribe for offences of each class?

18. Would you make a difference in the procedure of trials for offences within and without the marital state, and if so, what would you suggest in each case?

19. Would you suggest any safeguards beyond those existing at present against collusion to protect the offender or against improper prosecution or extortion?

20. Do you consider that penal legislation fixing a higher Age of Consent for marital cases is likely to be more effective than legislation fixing the minimum age of marriage? Which of the two alternatives would be in consonance with public opinion in your part of the country?

21. Would you prefer to rely on the strengthening of the penal law to secure the object in view or on the progress of social reform by means of education and social propaganda?

EXTRACTS FROM THE INDIAN PENAL CODE.

NOTE.—The bracketed portions are to be omitted from and those in italics are to be added to the original as per Sir Hari Singh Gour's Bill.

SECTION 375.

375. Rape.—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under (fourteen) sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

SECTION 376.

376. Punishment for rape.—Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both).

Section 376-A.

376-A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extracts from the Code of Criminal Procedure, 1898, Schedule II.

Of Rape.

N.I.V. of 1860 Section.	1	2	Whether the Police may arrest without warrant or not.	3	Whether a warrant or a summons shall ordinarily issue in the first instance.	4	Whether bailable or not.	5	Whether compoundable or not.	6	Punishment under the Indian Penal Code.	7	By what court triable.
376	Rape— (If the sexual inter- course was by a man with his own wife not being under 12 years of age.)	(Shall not arrest without war- rant.)	(Summons)	(Bailable)	(Not compound- able.)	(Imprisonment of either description for 2 years, or fine, or both.)	(Court of Session, Chief Presidency Magistrate or District Magis- trate.)	8					
376-A	If the sexual inter- course was by a man with his own wife being under (12) 13 years of age. In any other case	Shall not arrest without war- rant. May arrest without war- rant.	Summons Warrant	Bailable Not bailable	Not compound- able. Do.	Transportation for life, or imprison- ment of either description for 10 years and fine. Do.	Court of Session. Court of Session.						
376-A	Illicit married inter- course by husband with wife not under 13 and under 14 years of age.	Shall not arrest without warrant.	Summons	Bailable	Not compound- able.	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magis- trate or magistrate of the first class.						

BENARES.

**Written Statement of Mr. GAURI SHANKAR PROSAD, President,
Arya Samaj, Benares City, and VISHNU BHASKAR KEKAR.
M.A.**

1. There is dissatisfaction with the state of the law as to the age of consent as contained in 375, 376 of the Indian Penal Code. This dissatisfaction is general among thinking Indians and has been growing with the spread of education and ideas of reform, as well as experience of national deterioration.

2. (i) We are not in favour of the retention of the present law.

(ii) The age of consent as provided for in the present form is very low. If there is an advance made on the present law at least a substantial number of early consummations will be checked.

3. Crimes of seduction and rape are frequent in this part of the country.

So far as we are aware the Amendment of laws made in 1925 has succeeded to a small extent only, but not as much as it is desirable.

In order to make the law effective we think that only a slight advance in age will not be detectable and will not have the desired effect, for a girl of 12 may very well pass for one of 13; but if the age is raised to 16 or 18, the difference will be so marked that it will be easily detectable and at the above advanced age the girl also shall have sufficient discretion to give or refuse her consent.

Besides this if a system of registration of marriages together with proof of age is inaugurated it will also have a great effect in checking the crime of early consummation among married girls. This will not require much expense, for it can be done through the agency of the present birth and death registration department, but there should be a printed form of declaration which should be filled in, signed or thumb-marked by the declarant and attested by two respectable witnesses.

4. The amendment of 1925 raised the age from 12 to 13 only which is very slight. As stated above if the age is raised to 16 the difference in age will be easily detectable. No doubt it has had some effect in protecting girls against cohabitation with husbands in all the three ways enumerated under this question.

5. The usual age at which girls attain puberty (*i.e.*, commencement of menstruation) is about fourteen. We do not think that this age differs in different castes, communities or classes of society but those who are brought up in well-to-do circumstances have early developments. Also those who are born of premature parents have a tendency of early puberty.

6. In our part of the country as marriages are very early, cohabitation also begins early, in some cases before puberty, in some others soon after puberty and in many before the girl completes 13 years. Such cases seldom reach courts as these matters take place quite in private within the four walls of a family house during late hours in the night to the knowledge of only a few of the inmates who are mostly females illiterate as well as ignorant of law and evil effects of early cohabitation and always mindful of false ideas of honour.

7. To our knowledge the practice of early consummation of marriage has no religious injunction behind it according to the following verse occurring in Mitaksara on Verse 81 of Chapter 3 of Achara Section:

ऋतुजातांतु योभार्यां सविधौ नोपगच्छति ।

घोरायां भूष हत्यायां युज्यते नाथे संशयः ॥

यथा कामी भवेत् । ऋतावुपेयात्सवेचता, प्रतिषिद्धवर्जम् । गौतम ।

it is enjoined that the husband should have intercourse with his wife on the fourth or any of the following days upto the 16th. Otherwise he commits a sin of killing a child (i.e., not taking steps to cause the birth of one) penalty being the same as for a homicide.

8. Yajnavalkya Prayashchittachhyaya Gavana ceremony is usually performed in this part of the country but in some cases wives are sent away to their husbands' houses just after the marriage ceremony and consummation of marriage takes place after Gavana. (Wherever it is performed) and even before it if opportunity offers. In the matter of consummation of marriage people generally don't wait for the attainment of puberty partly due to ignorance but mostly due to want of self control.

9. We do not think that attainment of puberty (beginning of menses) is a sufficient indication of physical maturity to justify consummation of marriage, for menses do begin some years before the body is properly developed to justify cohabitation.

A girl's physical development enough to justify the consummation without injury to her own health and that of her progeny is not attained at least within three years after the beginning of menstruation.

Instances are not wanting where consummation by a husband of eighteen with his wife of sixteen caused physical injury to the wife.

10. The age would differ with education or ignorance as the case may be. In the case of an educated girl the proper age would be eighteen but in the case of an uneducated girl it may be much higher.

11. Yes. In case indicated above in question (9) cohabitation with a girl of sixteen resulted in physical injury to the girls' private parts; and the issue resulted in abortions, still-born as also short-lived children. In some other cases of early consummation, there have been cases of laboured delivery of still-born or short-lived children.

12. Yes, early consummation and early maternity are to our mind mostly responsible for high maternal and infantile mortality. They are also responsible for shortness of average vitality, and lack of endurance as also many other evil results.

13. There does appear some development of public opinion in this part of the country as suggested, though not exactly on account of the amendment. It is general but specially among educated and the thinking classes.

14. In this part of the country women do favour early consummation of their children on account of their desire to see grandchildren rather early, and on account of their ignorance of the evil consequences.

15. In a case which recently went to the Allahabad High Court, there were difficulties. As suggested above in answer to question (3) if a system of taking declaration before marriages and registration of marriages is inaugurated it will have the effect of minimising such difficulties besides checking early marriages and early consummation.

16. It will be minimised to some extent but the margin being very small it will not have the desired effect. Of course, if the age of consent is raised to 16 in the case of marital consummation and to 18 in the case of extra-marital cases it will be reduced materially with salutary effect.

17. Yes. In case of marital offences the period of imprisonment of the husband should not exceed the limit of 16 years of his wife's age. There should become provision to punish those who bring about early marriages

and consequent early consummation. Punishment to such men should be much higher than of the husband himself.

In case of extra-marital offences the punishment to the offender must be very heavy and deterrent. The present scale of punishment appears to be sufficient in this case, but should be administered rather rigorously.

18. Yes. The procedure for the trial of marital offences should be in camera by Magistrates of advanced age and if possible by lady Magistrates.

In the case of extra-marital offences the present procedure is sufficient but the girl concerned should be examined in camera and if possible questioned by some educated lady.

19. No. We cannot think of any except the spread of education and awakening of the people.

20. No. The raising of the age of consent in marital cases will not be so effective as fixing the minimum age of marriage because when children are married early consummation follows and offences do not come to court and even parents come forward to give false evidence that their daughter is of a higher age than she actually is as happened in a case that came up before the Allahabad High Court very recently in order to save the son-in-law from being punished. The above will be in consonance with public opinion as well.

21. As the society at present exists strengthening of the penal law would be preferable, but education should also continue if possible.

In Vernacular and Anglo-Vernacular schools there should be lessons on evils of early marriage and premature consummation.

Oral Evidence of Mr. GAURI SHANKAR PRASAD, B.A., LL.B., Yakl, High Court, Benares City.

(Benares, 10th January 1929.)

Mrs. Beadon : Are you a Barrister?

A. I am an Advocate.

Q. How long have you been?

A. For 22 years.

Q. Have you knowledge both of city and village conditions?

A. Yes. I was born in a small town near a village and received education and have been living in Benares.

Q. Would you mind telling us what caste you are?

A. I am an Agarwal Vaish.

Q. In your community what is the marriage age?

A. They marry generally below 12.

Q. What is the age for boys?

A. Between 14 and 16.

Q. If the marriage age for girls is 12 when do they go to the husband's house?

A. There is no restriction, they go straight away after marriage. That is the curse of it.

Q. Do you think in a larger number of cases consummation takes place?

A. It does.

Q. You say in your answers that puberty is attained generally at 14. They go to the husband's house before that?

A. Yes. I have got the instance of my own niece. I had to contend very much against other members of my family and much to their unwillingness I postponed the marriage as far as possible. The marriage took

place last year and the girl was about 13 at that time. I could not push it further. I was obliged to celebrate the marriage. The boy to whom she has been married is 18 and though Goana has not been performed the girl had to go to her husband's house to take part in certain ceremonies and I am afraid consummation has taken place.

Q. Is that the same in all castes?

A. It is mostly so in upper classes.

Q. Is it different among the lower classes?

A. Among the lower classes consummation takes place a little later. They marry earlier but consummation takes place a little later.

Q. How is it that in spite of your desire you could not keep your niece beyond 13? Is it on account of social ostracism?

A. Mostly the ladies are against performing marriage late. They do not let it go beyond 12.

Q. At other places we have been told that the ladies do want to raise the age of marriage.

A. They do desire. For instance, I consulted my wife and she says that consummation should not take place earlier than 16 but marriage should not be deferred beyond 14.

Q. Do you think that she would be willing to have a law fixing the age of marriage at 14?

A. Yes.

Q. Do you think women will support such a law or oppose it?

A. The ladies would rather favour it. There is one thing that is always sticking in their minds. They consider it would be against religion to defer marriage till after puberty because they think to give the girl in marriage before puberty is to perform "kunyadan", and they consider it to be very sacred.

Q. You have seen a large number of early marriages. Have any cases come to your knowledge in which injury has resulted either to the mother or the child?

A. Oh, yes. There happened one case in the family of my relation. The girl was 14 years of age when she gave birth to the child. She died on account of that maternity.

Q. Did she actually die as a result of that labour?

A. Yes. She was sent to hospital for delivery and the lady doctor there can give you details. The poor girl died in hospital. She sustained such bad injuries that she could not survive.

Q. Was that a girl of fairly good physique?

A. I had not seen her personally.

Q. What about her relatives? Are they strong and healthy?

A. They are mostly fairly healthy.

Q. When did that take place?

A. It happened sometime in October.

Q. What was the age of the husband?

A. Must be about 23 or 25.

Q. Would you say that that is an extremely exceptional case or do you think there are a number of cases like that?

A. There are a number of cases but they do not come to light.

Q. Is there a talk about them?

A. Yes.

Q. Do you know of any other case?

A. I know of some other cases too in which death did not take place but they were extremely difficult cases of delivery.

Q. In this case did the child die too?

A. The child survived.

Q. What is your opinion about the children of these young mothers?

A. The children are hopelessly weak, and they are short-lived. There is a close relation of mine who was married very early and he has got five or six children and they are all very very weak. I don't think they will live long. Fortunately they are still living.

Q. What was the age of the wife in this case?

A. About 12.

Q. When the first child was born she must have been about 14?

A. Yes.

Mr. Shah Nawaz : Have you reason to believe that most of the married girls are consummated between 12 and 13 independent of the question whether the girl has arrived at the age of puberty or not?

A. Yes.

Q. Do you think the percentage is more than 50?

A. I should say more. It may be about 75.

Q. Can you tell us whether the married girls are usually consummated before puberty?

A. Yes.

Q. What is the feeling of men regarding consummation at this early age?

A. The educated are in favour of an advance.

Q. What is the feeling of the women?

A. They generally feel that the age should be raised. There is generally a false notion of religion that marriage must take place before the menses begin. They think that it is "dharma" to give away the girl before menstruation.

Q. Do you think women who are literate think in that manner or the village women think in that way?

A. The percentage of those who think like that is decreasing.

Q. You say that the age of marriage and the age of consent should be at par and that should be fixed at 16?

A. Yes.

Q. You know at present there is no age limit for marriage, don't you think it would rather be a sudden jump to go to 16 at once?

A. As a matter of compromise the marriage age may be fixed at 14 and consummation should not begin till 16.

Q. But how are you going to make the law effective according to you. Girls between 14 and 16 will be consummated.

A. That is a very awkward position. There is one case which came to my notice and that I have referred to in my written statement. There was great difficulty in fixing the age in that case. Justice Suleman had to reduce the sentence. He said the parents could not be touched as the law stood.

Q. Who should be the complainant in marital cases?

A. The relatives and family people won't come forward and if we leave the matter to the police there may be some difficulty and extortion and hardship. It is a very difficult problem.

Q. Would you leave it to the public to report such cases?

A. Public won't take interest in these things. What happens in a particular family the public don't mind. I would suggest that some medical officer, for instance, in municipal areas the health officer, may be made responsible for making report of such cases.

Mrs. Beadon : Do you think it would be possible to give this work to any social organizations?

A. The difficulty is that it won't come to their knowledge and as I have said such cases are very rarely known to those outside the house.

Mr. Shah Nawaz: You will like that the marriages should be registered?

A. Yes.

Q. Don't you think it would be advisable that the officer who registers the marriages may be directed to compare the entries with the birth register and in case of breach he should make a report to the Magistrate of the Ilaqa?

A. That is a feasible proposition.

Q. Don't you think that the Magistrate should make a preliminary enquiry before issuing summons, etc.?

A. He should.

Q. Can you suggest any other method?

A. I can't think of any other.

Q. Would you like to leave the punishment as it is now?

A. No. In marital cases the punishment should not go beyond the age of 16. Suppose the age is fixed at 14 in marital cases and consummation takes place at about 13 then the husband ought to be sent to jail for 3 years, so that when he comes back the girl may be 16.

Q. Would you exempt the girl from punishment?

A. She should not be punished.

Q. Do you think a boy of 16 should be punished?

A. He will be sent to a reformatory, and will be kept away from the girl. That will be sufficient punishment for him

Q. You think he should not be exempted?

A. No.

Q. Would you punish the parents of the boy or the girl also?

A. It is they who are chiefly responsible.

Q. Would you punish the priest also?

A. The priest is an innocent beast.

Q. Sometimes, we have been told, they make great mischief?

A. They do and they make money. That is their only business in these ceremonies. But it is the parents who are probably responsible; if the parents would not engage the priest he would not come in.

Q. Suppose we fix the marriageable age at 14 or 16 would you like to make some exemptions?

A. No.

Q. In some cases where the father is very old or there are economic reasons would you have exemption from the operation of the law?

A. No.

Q. You think hard cases should not make bad law?

A. They should not.

Mr. Mitra: What is the usual age of marriage amongst your own class?

A. About 12 for girls and about 14 for boys.

Q. Is the same among all the castes?

A. It differs.

Q. Is there any class where marriages take place after puberty?

A. Yes, among some Brahmins and Kyshtriyas where there is a system of dowry the marriages are delayed. If a boy of a higher family accepts a girl of a lower family a larger amount of dowry is claimed. If the girl's parents are unable to pay they have to defer the marriage in order to have money enough to pay for the dowry.

Q. May we take it that among Brahmins and Kyshtriyas marriages take place after puberty?

A. In some cases. In about 25 per cent. cases marriages take place after puberty.

Q. Can you tell us the names of those castes where marriages always take place before puberty?

A. Among Agarwal Vaishes and Vaishes generally marriages take place before puberty. Among Brahmins and Kyshtriyas also in some cases marriages take place before puberty. Among the Kaisthas as well this is the case.

Q. What about the depressed classes?

A. They celebrate marriages very early but consummation does not take place so early. Marriages are performed even when the child is in arms.

Q. Is there widow re-marriage among the lower classes?

A. Because the higher classes don't favour it they think that that is a curse. They think they will be classes lower if they had that custom, and that they will be regarded higher if they did not have it. This false notion of prestige and status acts prejudicially in case of widow re-marriage among the lower classes.

Q. Have you any experience about Mohammadans?

A. Not much. Even among the Mohammadans I have learnt that widow marriages are not favoured by the moneyed men, men of higher castes.

Q. You speak of registration of births. What is the practice here in this province?

A. For towns the Municipal Act lays down that births and deaths should be reported within three days.

Q. If it is not reported is there any punishment?

A. There is.

Q. Is it strictly followed?

A. Yes.

Q. What about the villages?

A. In villages the chowkidars have instructions to report the birth to the thana. They report to the nearest police station.

Q. But perhaps there is no provision for punishment in case of non-report in villages?

A. It is there.

Q. Is the record accurate?

A. It is not.

Q. Then you suggest registration of marriages. Do you mean merely a record or regular registrar and the payment of fees?

A. A nominal fee may be charged. This registration will have I think a deterrent effect on the celebration of early marriages.

Q. You are suggesting that the age of the girl and the boy should also be given?

A. Yes, and if possible it should be accompanied by the birth registration certificate. When the birth of the child is reported a receipt is given. That receipt can very conveniently be attached to this report and that will be a check.

Q. There is a great difficulty about identification as names are not given immediately on birth. When are the names given?

A. Generally the "naukarn" ceremony is not performed. In very high families only this ceremony takes place. It comes about 6 months after birth. It takes place not earlier than that. There is that difficulty of identification in most cases especially when there may be many children born to parents. Without names it is difficult.

Q. But that may be provided against if there is a column left to be filled up about a year after?

A. Yes.

Q. Will the Hindu community accept the idea of registration of marriages?

A. They may not welcome it because it will be entering into details. But this being a national idea, it should not be grudged.

Q. You say, the practice of early consummation of marriage has no religious injunction behind it. Don't you think that there are texts in the *shastras* making it obligatory to have consummation within 16 days of puberty?

A. I have quoted a verse occurring in Mitaksara on page 81, Chapter 3 in support of my statement. There is some religious notion among the people. There was one Tehsildar and he used to take leave from the collector every month for two or three days. The collector asked him once the reason of his leave every month and he said that he would be committing a sin of "Brunhatya" if he did not go to his wife after her menstruation. He was a very simple and innocent looking man.

Q. Do you think that is not binding?

A. It is merely recommendatory.

Q. Are the marriage injunctions binding?

A. No.

Q. You don't think the orthodox will object to the law fixing the age of marriage?

A. Among the lady folk there is generally the idea that marriage should take place before the menses begin. They consider it sacriligious to defer marriage till after puberty.

Q. But as a matter of fact you said even now among 25 per cent. Brahmins and Kyshtriyas marriages take place after menstruation?

A. Yes. In some of these cases the question of dowry comes in. On account of financial difficulties to give the dowry the marriage is deferred.

Q. Is there any social pressure, any ex-communication if the marriage is postponed?

A. No.

Q. Is it tolerated then?

A. Yes.

Q. Even the Brahmins do not care so much for the religious injunctions about marriage?

A. No, they do not.

Q. May we take it that if a law is passed fixing the minimum age at 14 there will not be much agitation?

A. There will be no difficulty. Some of the so-called religious people may raise hue and cry but that will not be much. I do remember the days when I was in school and when the age was raised from 10 to 12. There was great hue and cry but nothing took place. The people became accustomed to it later on. Similar was the case in 1925. Some hue and cry was raised but all subsided. It is all temporary. If the law is changed now there will some hue and cry, but we have to look to the national benefit rather than to ignorant cries.

Mr. Mudaliyar: In those cases where the marriage takes place after puberty is the fact of puberty openly published or is it attempted to be concealed or is it ignored?

A. It is not openly published, it may be concealed.

Q. If such a marriage takes place is the sense of the community against such marriage?

A. Yes.

Q. And that is the reason why the fact of puberty is hidden as far as possible?

A. Yes.

Q. Don't you think therefore that in your community, Brahmin and other higher castes, the feeling is much against marriage being postponed after puberty?

A. It is due to ignorance.

Q. It is difficult to say it is due to what. Can I take it among the educated classes, among the fairly literate classes there won't be this discontent?

A. To some extent they will reconcile to it.

Q. Is there any idea of some religious sanction behind it?

A. No.

Q. Is that not the real reason why puberty is attempted to be hidden?

A. It is not on account of any religious idea. There is some false notion of prestige.

Q. What is the prestige? Would you put it as prestige or as something not sanctified?

A. There is a general notion that marriage should take place before puberty.

Q. What is that notion due to?

A. They think it will be against dharma if marriage is not performed before puberty.

Q. Therefore there is no question of prestige involved in it. Is it not?

A. Prestige, because if that is known to others the man will be lowered in their estimate.

Q. Are the other injunctions of dharma strictly followed?

A. The man thinks that he will be lowered in the estimate of others if he did not celebrate the marriage before puberty. There is an idea of "kanyadan". There is no idea that it would be going against religious texts. The idea is that people should not think that the marriage has been postponed till after puberty.

Q. And that social degradation is due to the idea that the marriage should be according to religious sanction.

A. There is no social degradation. Nobody knows the texts.

Q. It is a question of degree. It may be as high as outcasting or it may be just a little lowering of the eyelids. There may be some talk that such and such thing has taken place?

A. If they had attached any such importance to such a thing they would have outcasted the man who performed marriages after puberty.

Q. May I put it this way then, where marriages take place after puberty it is due to either economic causes or the difficulty of getting a proper bridegroom?

A. Both.

Q. In a few cases, it is due to conscious effort on the part of parents to postpone marriage till after puberty.

A. It is not due to that.

Q. In all these cases is it really an involuntary act?

A. Mostly. But the educated do defer it consciously and knowingly.

Q. What is the state of feeling of the ladies in this province?

A. They have that religious notion of performing dharma by giving 'kanyadan' of a girl who has not attained puberty.

Q. Have there been any ladies' conferences in this province?

A. Several.

Q. Has any resolution been passed in favour of post-puberty marriage?

A. Only lately there was a conference probably at Lucknow.

Q. From your knowledge of the participants in these conferences would you say they are fairly representative of ladies of the province or only advanced and educated ladies take part in them?

A. The ignorant ladies would not go out of purda even to travel beyond their houses. Having worked in the Seva Samiti on the occasion of 'Graham' or some such ceremonial occasions I have their experience. The people bring ladies of their families also. Unfortunately when they become widows they leave them here, many of them, uncared for. I had great difficulty of finding out where they come from. Their knowledge is so much confined to the walls of their houses. Such ladies could not be expected to join these conferences.

Q. But such ladies ought to be infinitesimally small?

A. Their number is very large.

Q. Do they belong to all classes, rich and poor?

A. Yes.

Q. Can it be said that these conferences are fairly representative of the opinion of these ladies?

A. If we consider the opinion of ignorant ladies who have no idea of national well-being then we can't say that that opinion is really representative, then that conference would not be called representative. But then as a political body the Liberal Party is very small in number yet they represent public opinion.

Q. I want to know if the views of the educated ladies are put to the ignorant how will they take it.

A. They will not like but if it is explained to them they will be brought round. Take for instance my own family, the elderly ladies are not educated but when things are explained to them they welcome the idea.

Mr. Yakub : To whom would you entrust the duty of registering marriages?

A. It will be less costly if it is given to the authorities registering births.

Q. Do you think that registering of births and deaths is not satisfactory?

A. In villages it is not.

Q. What would you suggest to improve the registration of births and deaths?

A. There is a movement afoot for organizing panchayats in villages and that panchayat may be entrusted with this duty.

Q. Would you make these cases compoundable?

A. No.

Q. Don't you think that if a husband is sent to jail on account of his wife his relations with his wife will not remain cordial. When he comes out he may desert her.

A. I don't think so. Even if that will happen it will be in an infinitesimally small number of cases.

Q. What is the general state of health of women in Benares and near about?

A. They are not very good in health because consummation takes place early.

Q. Can you tell us what is the percentage of infant mortality here?

A. The children die very early. Infant mortality is very high. It may be 60 or 70 per cent. or rather more.

Q. You think the proper age for maternity is three years after menstruation?

A. Yes.

Q. If puberty is reached between 12 and 14 the marriage should be deferred till after 16?

A. Yes. But it will be very difficult to enforce the law if we at once raise the age from 13 to 16.

Q. You think it would be better if it is raised to 14 and then after some time it is raised to 15 and so on?

A. Yes.

Q. Of the two laws would you prefer raising the age of consent or fixing the minimum age of marriage?

A. Fixing the age of marriage because in most cases when marriage takes place consummation cannot be postponed.

Q. In these cases to whom would you give the power of making complaints?

A. If possible to the Health Department in Municipal areas.

Q. And in rural areas?

A. There is no such organization as Health Department in rural areas. So it can be the chowkidar or the second agency is the school master and the panchayat would do this work.

Q. Do you think it would be better if these prosecutions are started a month or so after the marriage is performed, because it would be very annoying if marriage is followed at once by prosecution?

A. Yes.

Q. How long after would you like?

A. A month or so, not more.

Q. And what punishment would you award in such cases?

A. I would like to keep the husband and wife away. The newly married couple should be kept separate.

Q. Until the girl has reached the age of 16?

A. Yes.

Mrs. Nehru: Would you like the idea of separating the husband and wife by means of bonds from the husband?

A. That won't work.

Q. Will only imprisonment work?

A. Yes.

Q. In case the bond is broken the imprisonment can be resorted to?

A. That will make the matter further complicated. The boy may be sent to some reformatory school where no other offenders are sent. We have got one at Chunar, where the boys are taught some industry and are kept within the four walls of a big house.

Q. Do you think it is necessary to keep them within the four walls of the house?

A. Otherwise they will repeat the offence. This bond system is not workable. It will not have the effect that it is desired to have.

Mr. Yakub: Don't you think in India the boys are not responsible for their marriages, it is the parents who are responsible?

A. Quite so.

Q. Would you punish the boy for the offence committed by the parents?

A. The boy should be punished.

Q. What about the priest?

A. He is not so much responsible. His duty begins and ends with getting *dakshna*. That is the only objective with which he comes in.

Mr. Kadri: But some people have said that these Brahmins encourage people to have early marriage and press them for it?

A. That is simply to earn their livelihood earlier.

Mr. Yakub: Would you like to have some matrimonial tribunals to try these cases?

A. Yes, if possible. And if available there should be a lady Magistrate and if not there should be some aged Magistrate to try these cases. The trial should take place in camera.

Q. But if the Magistrate is assisted by two non-official co-judges?

A. That would be better.

Q. Will that inspire more confidence?

A. Yes. But those men should be drawn from some social reform bodies like the Arya Samaj.

Q. You say marital cases should be tried in camera. What about the trial of extra-marital cases? Don't you think they should be in camera?

A. They may be, I am not very particular about that.

Q. Don't you think the extra-marital cases are even more scandalous than the marital cases?

A. Yes, even they ought to be tried in camera. In extra-marital cases I would not fix the age below 18. In all worldly affairs girls and boys are both expected to be majors at 18 and in these matters a lower age should not be fixed.

Mr. Bhargava : When was the Arya Samaj established here?

A. It must be before 1903. The Mandir was constructed in 1903, so it must have been established before that.

Q. How many members are there?

A. About 100.

Q. So far as Arya Samajists are concerned they marry their sons and daughters late?

A. Yes.

Q. What is the usual age amongst the Arya Samajists?

A. They are expected to marry their girls not before 16 and their boys not before 25, but there is some relaxation as they are not so absolute.

Q. They try to raise the age among other persons also. They carry on some propaganda?

A. Yes.

Q. Are there any other associations?

A. No.

Q. Are the caste panchayats and village panchayats of old fashion or of new fashion?

A. New as well as old.

Q. Have those conferences or panchayats fixed no age?

A. No.

Q. Leaving aside the Arya Samajists is there any society which is working for social reform?

A. For instance among the Agarwals there is the Agarwal Samaj.

Q. Have they taken up this question?

A. Yes.

Q. What is the membership?

A. About 200.

Q. Has this social reform made any headway among Agarwals?

A. Early marriage has been abolished to some extent. I was married when I was 12 years, but I have been marrying my brothers and other relations at a much more advanced age.

Q. Among the Brahmins the only question which makes for late marriage is economy.

A. Mostly.

Q. What is the rule among other communities?

A. There are several castes among whom there is a system of dowry that makes for the marriages.

Q. What are those communities?

A. Brahmins, Kshatriyas, Bhoomihars, Kaysthas.

Q. What are the communities in which early marriage takes place?

A. Among these very castes.

Q. Among the more orthodox section?

A. Yes.

Q. What about the lower classes?

A. They marry their girls at a very early age.

Q. At what age?

A. Two, 3 or 5. Kories, Kurmies and such other castes all marry very early.

Q. What about Chamars?

A. They also marry very early.

Q. What about Julahas?

A. They also marry early.

Q. What is the age among them?

A. Eight or 10.

Mr. Kadri: Has it not been rising of late?

A. It has been rising. That is the usual age.

Mr. Bhargava: So this is the age after it has risen? Previous to this was it less than this?

A. I know cases in which children were married in the laps of their mothers.

Q. Since what time are these ages rising?

A. No demarcation of time can be made. But it is owing to the trend of the times that the age has been rising.

Q. What is the present age now amongst these lower classes?

A. I think it is between 6 and 10.

Q. When does consummation usually take place amongst these classes?

A. Generally at and about puberty, but not before puberty.

Q. Are these girls kept in their parents' houses till they attain puberty?

A. Yes; generally they are not sent to their husbands before puberty.

Q. Is there any community in which pre-puberty consummation takes place?

A. Yes; it takes place in most of the upper classes.

Q. Does the system of Goana obtain in the higher classes?

A. In some cases it does; in most cases it does not. The girls are usually sent to their husbands' houses after marriage and usually consummation takes place without let or hindrance.

Q. When do the girls of the higher classes usually become mothers?

A. At 14 and 15. I have cited a case in which in October last a girl of 14 gave birth to a child in a hospital and died.

Q. What is the usual age of motherhood amongst the lower classes?

A. It is about the same, that is, about 14.

Q. You have given a suggestion that there should be instruction in Vernacular and Anglo-Vernacular schools about premature consummation. What schools do you refer to? Do you mean primary schools?

A. I mean the middle schools where the children are likely to understand these things.

Q. Do you not think that these girls cannot understand the evils of premature consummation though they can be taught the evils of early

marriage? On the other hand do you not think the results will be to the contrary?

A. They might be told that if children are born to boys who are of immature age it will be national degeneration, etc.

Q. Then you say that lady Magistrates should try these cases. Are there any lady Magistrates in United Provinces?

A. I have said if possible they might be appointed. When Honorary Magistrates are created by the Government from amongst people who are not versed in law, and who are not also much educated, why not the Magistrates be ladies who are of some education and standing?

Q. Why do you want that these lady Magistrates should try these cases?

A. I think that ladies would be better able to understand the situation and the practicabilities of the case.

Q. Do you mean to say that men of advanced age would not be able to understand these things as the lady Magistrates?

A. The lady Magistrates would be better able to understand the position of the girls and the ladies.

Q. But the accused would be boys?

A. But then the party who are offended against are ladies and the ladies would be able to understand them better. They would have more sympathy also because they would be better conversant with the sentiments of the people. Also they can examine the girls personally if necessary.

Q. Have you got any experience of reformatory schools?

A. I have visited them.

Q. What class of accused are sent there?

A. It is not confined to any particular class.

Q. Are there any college students, or scions of any noble families in these schools?

A. No.

Q. Then why do you say that these schools will be very good for high class people?

A. The ordinary jails will not be good to send them to. The reformatory schools will be better places because there they will be able to learn some work and study some handicraft.

Q. As it is now, all the juvenile offenders including thieves are sent to these schools. Do you want that these boys from high class families should be put along with them?

A. I would prefer them to be there as compared to ordinary jails.

Q. What is your difficulty in accepting the suggestion made already to you in regard to taking bonds and separating them, keeping the boys and the girls in their respective parents' houses?

A. All the same they will approach each other, and there will be no check, no guard and no watch.

Q. What is the guard or check then by which you believe there will be a report of the first offence?

A. I have suggested Panchayats.

Q. Do you not think the same authority will report the second offence as the first offence? If the prescribed authority is vigilant enough in the first instance, there is no reason why it will not be vigilant in the second instance?

A. The same authority will have to look after cases of first occurrence as well as second ones. Thus cases will be multiplied.

Q. How will it be more? Take the case of a village consisting of a hundred houses. There is a registering authority who is in charge of the village, and he is either the schoolmaster or the Patwari. All the cases will come to his notice. What will be the difference if it is committed a second

time by the same parties? There cannot be double the number of cases because the number of parties will not increase. Also by this arrangement you will not be ruining the life of the boy.

A. I think in such cases the rule may be relaxed, but not as a general rule.

Q. You say that the officiating priests should not be punished, for it is the means of their livelihood. Are you not for prohibiting such means of livelihood?

A. I would do, but they are not the primary cause of bringing about early marriages.

Q. Do you not think the priest is really influential in many cases?

A. The priests are only consulted to see whether the horoscopes agree and whether the time fixed is auspicious.

Q. Supposing in other parts of the country there is a great deal of influence exercised by them?

A. Then they ought to be punished.

Q. No marriage can be celebrated except through the priest or the pandit, and therefore why would you not make the priest punishable?

A. I was talking of general cases in this country where Purohits do not generally bring about marriages.

Q. But they officiate at the time of marriage, and those who participate in the marriage will be abettors.

A. I am not excluding them, but I was talking of those cases where marriages are not settled by them.

Q. Is there any way by which you can protect them as well as enact the law? For instance would you punish them in cases in which it is proved they knew the age of the girl?

A. Then they must be punished and it will be open to them to prove that they did not know the age of the girl.

Q. You refer to a case in which a boy of 18 caused injuries to a girl of 16. You yourself say that consummation can be allowed in the case of a girl of 16. What was the case you were referring to?

A. The girl sustained some injuries in her private parts.

Q. Was she under-developed?

A. Yes; it was an exceptional case.

Q. You say that those who are born to premature parents have a tendency to attain puberty early. What is your basis for saying so?

A. I have come to know of some cases where puberty took place early, and on enquiry it was found that the parents of whom these girls were born were married early. I deduce it from these cases.

Mr. Kadri: In paragraph 15 you say that there should be a declaration before puberty. What is the kind of declaration you are thinking of?

A. Declaration about the age of the girl and the boy who are going to be married.

Q. By whom should the declaration be made?

A. By the parent or the guardian before a Magistrate or the Registering Officer.

Q. Do you not think that it will be a hardship on the agriculturists who live in the villages? If you have accurate registration of births and accurate marriage registration, do you think there is any need for such declaration?

A. Without declaration what guarantee is there that the age given is the proper age?

Q. The declaration may itself be false.

A. It will have some moral effect if there is such declaration.

Q. But people who are anxious to marry their children early will make false declarations and commit perjury.

A. Then they ought to be punished.

Q. Are you satisfied with the system of choosing Honorary Magistrates in this part of the country?

A. There is dissatisfaction. Honorary Magistrates are created simply as a reward for helping high officials.

Q. Do you think you will be able to get proper men for matrimonial courts? Who will select the men for these courts?

A. I want that there should be either a Panchayat system or some reform body.

Q. What is the system of birth registration prevailing in these parts?

A. In Municipal areas the birth and death registers are kept in every ward, and a clerk registers the births and deaths.

Q. Is it obligatory on the parents to report?

A. Yes; omissions are punished.

Q. What about the system in the rural areas?

A. It is not so rigid there, but still there is some provision.

Q. Do you think the system is working satisfactorily?

A. Not in the rural areas.

Q. What suggestion would you make to make it more effective?

A. I think some system of village Panchayats should be inaugurated.

Q. Is there any village Panchayat Act here?

A. Yes; and Panchayats are being re-organised. There is a movement for the re-organisation of villages, and for the establishment of schools in the villages. The teachers of these schools might be utilised in some way.

Q. We have been told that it is difficult to work these Panchayats because of internal dissensions. Do you think so?

A. There are bound to be such things in the transitional period. But I think if you entrust the power to the schoolmasters, I think they will be a better agency.

Q. Have you got better class of men amongst them?

A. One or two people might be partisan. These are mostly trained teachers who have had some education. They would be better than the ordinary run of villagers.

Q. Some witnesses have suggested that high infantile and maternal mortality is more due to frequency of maternity than to early maternity. What is your opinion?

A. It may be comparatively so; but I think both are equally responsible.

Q. Some people have suggested that this is a social matter and we must therefore leave it to social organisations to remove the evil. Do you agree?

A. I think the remedy suggested is like leaving a disease to be cured by nature. Government enacting a law will be analogous to employing a doctor to cure the disease.

Mrs. Nehru: You have referred to seduction and rape in this province. Have you followed any of the cases?

A. I have followed one or two cases.

Q. What was the age of the girl?

A. About 13 and 12. In some cases it was 9 even.

Q. What class was it?

A. Nonia, or the people who dig earth. They are low class people.

Q. Were all the cases amongst low class people?

A. I only know the cases which came to the courts, and they were all amongst the low class people.

Q. When did you come across these cases?

A. Within the last 5 or 6 years.

Chairman : To what community do you belong?

A. I belong to the Agarwal Vaishya community.

Written Statement, dated the 13th August 1928, of Dr. DHARAM DASS, Kaviraj, Ayurvedic Vidyalyaya, Hindu University, Benares.

1. Yes; the percentage of married persons is less than the unmarried.

2. Since 1925 the era of progress has begun. On account of the prevailing religious conditions of the people the girls are put to lot of troubles, sometimes death occurs. We emphasise therefore to raise the age of matrimony.

3. It is due to the awakening of the people that their opposition has lessened. It is not due to law. Indirectly it has no doubt helped by modifying the ideas of the people. The consent of married girls should not be before eighteen.

4. Country has not been benefited for its special environment. The law has been helpful in educating the people. It will be best to ameliorate the condition of the society. The minimum age for girls marriage may be fixed at 16 years.

5. It is written in the Shastras that menstruation begins at 12 and stops at 50. On account of the intense poverty of the people, the menstruation period is believed to be 14 or 15. The rich people have menstruation earlier than poor ones, for diet, dress and thoughts bring about puberty much earlier.

6. The illiterate people do not pay any attention to this fundamental question. They should be educated to feel its importance.

7. Marriage according to Shastras should take place before menstruation commences, i.e., a youth of 25 should marry a girl of 12. It is also mentioned that a young man of thirty should marry a girl of 12 or a young man of 24 should marry a girl of 8. Religion does give permission as stated above. In fact age differs according to the circumstances. The sexual intercourse is not allowed before 16. As is given in one of the Shastras "If pregnancy takes place before a girl is 16 years old the child dies or remains weak throughout his life". Here is another authority "Man at the age of 25 and girl at the age of 16 attain puberty and are fit for sexual intercourse."

8. At the time of marriage the bridegroom and the bride indulge in sexual intercourse in these days. Hence the need of raising the age of matrimony.

9. No. 16 years, i.e., two years after menstruation has commenced.

10. In the 16th year.

11. Many females die in travail and the children are crippled for ever.

12. There are several other causes the chief ones are mentioned above.

13. Everyone is in favour of raising the age-limit of marriage. Awakening of the masses is more essential than the help of the law.

Education amongst the people should be widespread.

20. The age of marriage be fixed.

21. The social status raised. Then the desired effect can only be brought about.

Oral Evidence of Pandit DHARAM DASS, Vice-Principal, Ayurvedic Vidyalyaya, Hindu University, Benares.

(Benares, 10th January 1929.)

Chairman : Are you Vice-Principal of Aurvedic Vidiyala, Hindu University, Benares?

A. Yes.

Q. Do you think that among those people who marry early consummation takes place before the girl is 13 years complete?

A. Yes.

Q. Do you think it is common soon after puberty?

A. Yes.

Q. Does it take place even before puberty?

A. Yes, in some cases. Some girls have a child at the age of 12.

Q. What age do you think is suitable for marriage of girls or consummation?

A. I think before 16 consummation should not take place. If the boy is 24 years and the girl is 16 years then the ova and semen will be of equal strength and if they are of less age than that, the children born will be weak.

Q. Would you recommend that marriage age of girls should be fixed?

A. No, marriage age should not be fixed but the age of consent should be raised to 16.

Q. When do marriages generally take place?

A. I am an orthodox Hindu and I know that marriages do not generally take place before 14 on account of difficulty of securing bridegrooms. Fixing of any age for marriage is also against the Dharm Shaster.

Q. In reply to question No. 10 you say that the marriage age be fixed at 16?

A. There is no harm if the marriage age is fixed at 12 and the age of consent at 16 but marriage age should not be fixed later than 12.

Mrs. Beadon : Can you give us details of any cases within your personal knowledge of evil effects resulting from early consummation and early maternity?

A. I see such cases in the dispensary but I cannot give you any details. These cases take place in all communities.

Q. Can you suggest means by which the husband and wife may be kept aloof after marriage?

A. Girls should not be sent to the husband's house.

Q. Do you want that parents who send their girls to the husband's house before she is 16, should be punished?

A. Yes.

Q. What punishment should be prescribed?

A. A small fine should be imposed; there should be no imprisonment.

Q. Should the punishment be given to husband or parents?

A. Both should be punished.

Q. Have you found in your practice during the last 20 or 25 years that girls now attain puberty earlier than 20 years ago?

A. No. On the other hand puberty is attained later now. Previously the age of attaining puberty was 12 but now it is 13 or 14. It depends on diet.

Q. Is there any other factor which affects the attainment of puberty?

A. Yes, by early companionship of the husband menses occur early.

Mr. Mitra : Do you belong to Bengal?

A. Yes, I am a resident of Nadia.

Q. Is Ayurved a part of the Shastras?

A. Yes.

Q. Is the authority of Ayurved binding upon the Hindus?

A. It is not only binding but I consider it superior to other shastras.

Q. You have said that there should be no child-birth before 16. Should one follow the real purport of shastras or merely the letter?

A. You should follow the spirit of shastras.

Q. If it is really to follow the purport the rules and regulations should be framed in such a way that the real purpose of shastras may be served. Is it not?

A. Yes.

Q. You know it is very difficult to keep girls away from consummation till the 10th year if they are married at 8 or 9?

A. Because the injunctions are not followed there are the evil consequences.

Q. You think a king should legislate in a way to keep up the spirit of shastras?

A. It is for the king to legislate, I am not in a position to say anything.

Q. If the king legislates for the best interests of the country, for the health of the people, and fixes the minimum age of marriage at 14 or 15 what will be your opinion about that legislation?

A. I am agreeable to such legislation. If the king takes the initiative and fixes the minimum age of marriage at 14 personally I shall be agreeable.

Q. What about that shloke then, 'Asht Barsha' and so on?

A. I do not like marriages at 6 or 7. It should not be at less than 12.

Q. As an actual fact you know that mostly girls are married after 12. If you insist upon shastric injunction you will simply make people say that their girls are not 12 when they are actually above 12. That will really be encouraging falsehood?

A. Yes. Shastra is also law. If by law it is enacted that marriage should not be celebrated before such and such age, that should be followed.

Q. Don't you think if a law is enacted the orthodox will much resent it?

A. I can't speak of others but personally I am agreeable to have such a legislation.

Q. You are learned in shastras and you certainly know that the shastric laws also change with the times. As times change the Rishies have laid down new laws. Is that so?

A. Yes, I have married my own grand-daughter at 13.

Mr. Shah Nawaz : Can the present Assembly change the law?

A. When there is no trouble occurring to the people the king can change the law. The Government can for the benefit of the people enact such laws.

Q. Is the injunction about marriage before puberty recommendatory or mandatory?

A. With the commencement of the menses sexual excitement commences and the Rishies laid down that marriage should be celebrated before puberty lest harm may be done.

Q. If they observe 'Brahmcharya'?

A. They can be married later.

Q. Are these injunctions observed more in breach than in practice?

A. Outwardly they observe but really they do not.

Q. If no age is fixed for marriage how will you make the age of consent law effective? You say the age may be fixed at 16.

A. The girl should be kept at the father's house.

Q. When once the marriage takes place it is difficult to keep the girl alone. The man will say, I will marry the boy at some other place.

A. If that happens the parents must also be punished.

Mr. Bhargava : If you want that a girl should have no child before 16 the proper remedy is that there should be no marriage before that age?

A. I want that marriage age should be fixed beyond 13. It should not be before 13.

Q. Is there any widow marriage among the Brahmins?

A. Except among the lower classes no widow marriage takes place.

Q. And many girls become widows at 5 or 6. Fixing the age of marriage will remedy this also. Is it not?

A. Yes.

Q. You say that the age of consent may be fixed at 16 so that a girl may be healthy and ripe. What about the 3 years that will remain between?

A. She will have to be away from the husband and have no consummation.

Q. But why can't you raise the age of marriage itself to 16?

A. That will be against shastras.

Q. But 13 will also be against shastras?

A. For 3 years a girl can wait if a suitable husband cannot be found.

Q. Suppose a girl is married at 13 or 14 and she becomes pregnant and then you punish the husband and send him to jail. Will it not be death itself for the girl who has become pregnant to see the husband sent to jail?

A. A fine should be imposed. For a big man a fine is very degrading.

Q. Do you think a fine will be deterrent enough?

A. A hard punishment is bad in the beginning. Punishment would however be helpful in postponing marriages.

Q. You know according to the "Chaturthikarma" ceremony the Garbhadan should take place on the 4th day after marriage, and consummation is only allowed by the shastras for the purpose of producing children. So that marriage should take place at such a date that it should be 4 days less than 16.

A. I don't think there is anything in the shastras that a man must go to his wife 4 days after marriage.

Q. You say the child dies if the girl is less than 16?

A. As a rule that is the case.

Q. For murder the punishment is death. You say the fine may be 2 rupees. Nobody would ever care for a fine of Rs. 2. Why don't you give a heavy punishment?

A. If you impose a small punishment first the people will begin to learn.

Q. But if a man is 25 or 30 and has consummation with a girl of 12 do you want that the punishment should be 10 years.

A. Yes, it should be so hard as that in that case.

Mr. Kadri : In extra-marital relations what age would you fix?

A. I would fix no age. That is against shastras.

Q. Would you say that the present age of 14 be retained?

A. The age and punishment must be as high as possible in these cases.

Q. What are the injunctions in the shastras about the education of girls?

A. Education must be given at the house of the father. There is no limit put.

Q. Is there a rule that girls must be given education like boys?

A. Yes.

Q. Is there any injunction that Bramhacharya must be observed upto the age of 25 or 30?

A. Where is Bramhacharya these days? Nobody observes it. Nobody cares for the demands of the Samaj.

Q. Is there any injunction that a girl should observe Bramhcharya upto 16?

A. No.

Q. It is for the boys?

A. If Bramhcharya is to be observed the boy must be sent to Gurukul.

Q. You have said that a girl is not fit for maternity till 16. Would you say that up to that age she should observe Bramhcharya?

A. A girl ought to observe celibacy till 16.

Written Statement, dated the 24th August 1928, of Mr. K. PARTAP SINHA, Superintendent, Ayurvedic Department, Benares Hindu University.

In reply to your questionnaire I have the honour to state that as an Ayurvedic practitioner of long standing I have come across cases in which cohabitation before full physical development of a girl has resulted in injury to her health and progeny. In the Ayurvedic Shastra the age limit for this purpose is fixed at 16 years for a girl and 25 years for a boy respectively:

जनवीडशवर्षायामग्रातः पंचविंशतिम् ।

यद्याधत्ते पुमान् गर्भं कुचिस्थः स विपद्यते ॥

जातो वा न चिरं जीवेत् जीवेद्वा दुर्बलेन्द्रियः ।

तस्मादत्यन्तबालायां गर्भाधानं कारयेत् ॥ सुव्रत, शा. १०३०८

I am of opinion that the only reasonable method of enforcing this sound rule is to disallow the consummation of marriage before the age of 15 in the case of girls. In Hindu Society, at present, boys and girls are married at a tender age, although the consummation of marriage takes place two or three years after. It is a very silly practice, as it tends to stimulate sexual instincts at an unripe age, and, in some unfortunate cases, adds to the number of child-widows.

The attainment of puberty is no sufficient indication of physical maturity to justify the consummation of marriage.

If the age of consent is raised beyond 14 or 15 years, to the extent of which it must be raised, one of the measures which may be proposed to make the law effective is to enforce the registration of marriages through the agency of municipalities where the birth record is kept.

In conclusion, I may say that the present law regarding the age of consent needs revision and effective enforcement.

Oral Evidence of Mr. K. PARTAP SINHA, Superintendent, Ayurvedic Department, Benares Hindu University.

(Benares, 10th January 1929.)

(Vernacular.)

Chairman : Are you in favour of raising the present age of consent?

A. Yes.

Q. To what?

A. Sixteen.

Q. Is there any special class here among whom early marriage resulting in early consummation before 13, takes place?

A. You find this in all castes, from the lowest to the highest. The Kurmies and Kunbies have all early marriages.

Q. Even among the higher classes is this the case?

A. Yes.

Q. Do many such cases take place?

A. Yes.

Q. In the majority of cases does consummation takes place before 13?

A. Yes. Consummation may be after puberty or before puberty. That is no consideration. They only follow custom.

Q. Do they join soon after marriage?

A. Yes. Some advanced people may not do that.

Q. Is the evil in all communities?

A. Yes.

Q. Is it a fact that among the lower classes the girl is not sent to the father-in-law's house till she has attained puberty?

A. I don't think there is any such custom.

Q. Do you know of any such custom among the Ahirs?

A. I don't know.

Q. Then this law is so largely broken. Why don't these cases come to light?

A. I don't think anybody cares for the law. Nobody cares to investigate. We make enquiries only from the medical point of view.

Q. But you suggest that the age of consent should be raised to 16. How will it be made effective?

A. Therefore prohibit marriage before that. That is the only way.

Q. What age would you recommend for marriage?

A. Sixteen is the age when they should have marriage and join.

Q. Would you then rather have the age of marriage fixed?

A. Yes.

Q. Do you think the consent law would be effective without the law of marriage?

A. I don't think so. There are some girls who may be developed very soon and they can join without any difficulty at 13 or 14. But there are some who are 18 years old but may not be able to stand.

Q. Don't you think 16 is a good enough age?

A. Yes.

Mrs. Nehru : You want that the age of marriage should be fixed at 16?

A. Yes.

Q. Who should make the complaint? Do you want to make these cases cognizable or non-cognizable?

A. It should be cognizable.

Q. Then numerous cases will take place?

A. When the people know that they will be punished they won't do that.

Q. Is there any large number of people who think that it is religious injunction to marry before puberty?

A. Yes.

Q. Don't you think there will be great disturbance then?

A. There will be some agitation. There is agitation against every such law.

Q. You say those people are bound by religion to marry before puberty?

A. It is custom.

Q. Do you think people know about the present law?

A. I don't think they know it.

Q. Do the educated people know?

A. Nobody has to deal with law, and therefore nobody knows about it. I myself don't know the law.

Q. Have you had occasion to meet any cases of injury on account of early consummation and early maternity?

A. I have written two books in Hindi, "Zachha" and "Parbhooti Paricharya" as Principal of the Lalithari Sanskrit and Ayurvedic College, Pilibhit. I have seen girls becoming mothers at 11.

Q. When did that happen?

A. It was 7 or 8 years back.

Q. What was the caste of the girl?

A. Kayastha.

Q. Where was that?

A. At Hardwar.

Q. Do you know whether any injury resulted?

A. She had trouble in her back.

Q. Do you know of any other?

A. There are many cases at 11 or 12.

Q. How many cases would there be between 12 and 13?

A. I get 40 per cent. such cases.

Q. Cases suffering from such sort of diseases?

A. Yes.

Q. Is the same in villages?

A. I have not much knowledge of the villages.

Q. Do you know of any case in which there was trouble to the mother at the time of birth at 11 or 12?

A. They have difficult labour.

Q. How many cases have you seen within the last two or three years?

A. I can cite five or ten cases.

Q. What about the children?

A. Sometimes the child is cured and on several occasions the child dies.

Q. Have you compared the children of older mothers with the children of younger mothers?

A. The children of older mothers are healthier. My brother was married at 16 and the girl was 13. Eight children were born and all died.

Q. Have you had occasion to talk with the mothers? Do they realise the evils?

A. I have 50,000 cases a year. I see more cases of younger mothers. I know several cases of "white leg".

Mr. Shah Nawaz: How many years practice have you got?

A. Fifteen years.

Q. How many maternity cases have you seen?

A. I have seen cases in thousands.

Q. You say regardless of puberty consummation takes place?

A. In those cases injury also takes place. There is womb trouble. In a large number of cases there is great pain in back and there is constipation.

Q. Is it more among the younger girls?

A. Yes.

Q. Can you say what time should elapse between puberty and consummation?

A. Three years after puberty consummation should take place.

Q. Can you give any authority for that?

A. There are many doctors who can give you authority.

Q. Have you known of cases among Mohammadans?

A. Because of *purda* we can't know of cases among Mohammadans. Even if we go to a Mohammadan Lady patient we have to confine ourselves strictly to medical questions. We have no occasion to see their faces even.

Q. Have you ever enquired about the age?

A. No.

Mr. Mudaliar : What is your proposal about registration of marriages?

A. To make the law effective I think this practice will be very useful.

Q. Do you want all marriages to be registered?

A. Yes, you can ask the age of the couple and the physical fitness of the girl and the boy.

Q. Do you require the girl and the boy to be produced before the registrar?

A. A medical certificate would be sufficient.

Q. You want registration before marriage?

A. Yes, before marriage.

Q. You mean a license for marriage?

A. Yes.

Q. How would you get over the difficulty of attendance?

A. You can appoint lady doctors.

Q. Do you think a sufficient number of lady doctors is available to take up this work?

A. Within a few years you will find a number of them. So many nurses are available.

Q. Can you say who should register these marriages?

A. The Municipality can do it.

Q. In the rural areas?

A. The District Boards will do it. They have got health officers who can be made responsible for that.

Q. There will only be one health officer for the district?

A. But there are very few marriages. During the tour the health officer can just go and manage it.

Q. You don't think people will feel it a hardship?

A. No.

Mr. Mitra : Have you read the different texts of Shushrat? A Bengali Pandit said that the age given by him was not 16 but it was 12.

A. So far as I know 12 is not accepted by any learned Pandit. It is quite clear that he has given 16. I don't think there are any different texts.

Q. He was quoting to us the shloke saying menstrual course began from 12 and ended at 50.

A. But further on it is said that when the girl is "Atayantvala" no consummation should take place.

Q. Do you find that the orthodox people realise the evils of early marriage and early consummation?

A. They do.

Q. You don't think there will be much agitation?

A. No.

Mr. Yakub : At what age are the bones completely ossified to make a girl fit for consummation?

A. Sixteen.

Q. Can you give any authority?

A. Shushrat is an authority?

Q. You said that there should be a law fixing the age of marriage and that the offence should be made cognizable? Knowing the condition of Indian Police don't you feel that the ignorant people of the villages will be oppressed and bribery will become the common practice?

A. I think village people are now growing wiser. They are not much afraid of the police.

Q. How long after marriage should the case begin?

A. I am a resident of Udepur State in Rajputana. We have to give information to the Durbar that the girl has become of such and such age and age of the boy is such and such and permission is requested for celebrating the marriage. The Health Officer goes to the place and even to the villages and after seeing the horoscope the permission is given.

Q. Has every Hindu a horoscope and all the lower classes too?

A. Yes.

Q. What about the Mohammadans?

A. They may swear and get license.

Q. Whom would you punish, the parents of the boy?

A. Till 18 the boy should not be punished. Below that the parents should be punished.

Q. Who should decide such cases?

A. Ordinary courts, the Magistrates should decide these cases.

Q. If there is a matrimonial court having two non-officials will that inspire greater confidence?

A. That will be better.

Q. Who registers the births?

A. The municipality.

Q. Is the age given there correct?

A. I have not thought out the question. In the villages the chowkidar goes and reports the births to the nearest police station. The record however is not correct.

Q. How will you improve it?

A. The vaccinator goes and he can find out the age and then the teeth come out after the 8th month. From that you can make out the age. The license officer and the officer registering births should compare the ages.

Q. Do you want any fees for this license?

A. No, I don't think any fee is necessary. It is the duty of the State to do what is in the interest of the people.

Q. Will you make these cases compoundable?

A. How can they be compoundable when the girl has been ruined.

Q. Even with the permission of the Magistrate?

A. What do you want to be made compoundable? There is no case, there has been no fight for compounding. They think that it is dharma to marry girls at an early age.

Q. Supposing bond is taken that in future he will not do so?

A. The trouble in the first case would have taken place. What will be the use of the bond now?

Q. What punishment would you suggest?

A. It should be deterrent enough to prevent other people from repeating this offence.

Q. If this marriage law is not passed can you suggest any way of making the consent law effective?

A. I don't think it can be made effective. I know wives are even not allowed to talk. If we ask any question they do not give any reply. My girl was married at 12. It was all in spite of me. The result was that she died within six months of Tetanus.

Q. You think women are more responsible for this marriage than men?

A. Women also have that belief. Even people from the village believe so. If the girl is grown up they say that she should be married.

Q. Do you think the Mohalladars and the parents should be punished as abettors?

A. Whoever tries to have the marriage celebrated at that age should be punished.

Q. What is the usual age of puberty?

A. It is different in different families. It all depends upon the diet and other social surroundings.

Q. What is the general age?

A. I found in Madras girls of 10 attained puberty.

Q. How many years were you in Madras?

A. Years. I was a student in Madras.

Mr. Bhargava: What is the usual difference between the age of the boy and the girl at the time of marriage?

A. Among the Brahmins and Kyshtriyas the boys are older by two or three years. Among the Vaish they are equal.

Q. Among the lower classes?

A. Generally they are equal. There is no marked difference. The Kunbis and Kurmies marry very early.

Q. But the girl is sent to the husband's house when she is grown up?

A. I do not know about that.

Q. You know particularly about what?

A. I know only about cities.

Q. You think consummation itself without a child is harmful at that young age?

A. Yes.

Q. If the system of registration is introduced why do you want the police to come in?

A. I do not suggest that the police should have the power. This however is a question for lawyers.

Q. Do you want that everybody should know the law and everybody should be made responsible?

A. Everybody at the time of marriage should realise that there is a responsibility attached to it.

Q. Supposing a girl is 20 and a man wants to marry her and he does not take the license?

A. Why not, what is the difficulty?

Q. There will be many health officers who will ask for bride and the man may be poor and thus he may be oppressed. Thus before the marriage the case may go to a High Court.

A. There should be the fear that if the law is broken there will be punishment.

Q. Don't you want to make it a crime if a man does not take out the license?

A. What is the difficulty there?

Q. How many lady doctors are there in Benares?

A. You need not have many lady doctors. There is the health officer.

Q. There will only be one health officer for the whole District?

A. You can have two or three.

Mr. Kadri: You advocate the license system in order to prevent breach of the law. Would you be satisfied if sufficient safeguards are provided for punishing the breach of the law by giving the right of complaint to the headman of the village?

A. Somehow the law should be made effective.

Q. In Baroda this is the system. The village headman makes the prosecution.

A. It is not necessary that licensing should be made compulsory but there should be the fear that if the law is broken there would be some penalty. I do not insist upon license. There must be some arrangement by which the people must know their responsibility.

Q. You don't want to make the marriage illegal?

A. That will be a great difficulty for the girl.

Q. Is frequency of child-birth more responsible for mortality than early maternity?

A. Early maternity is more responsible. Frequency of child-birth is difficult to stop. It is better to put off maternity.

Written Statement, dated the 15th August 1928, of the Anjuman Islamia, Gorakhpore.

1. There is some dissatisfaction with the state of the law as to the age of consent as contained in sections 375 and 376, Indian Penal Code. Educated and enlightened people in this part of the country are of opinion that the age of consent must be raised by a few years if we are to derive any substantial benefit out of the law as contained in the above two sections.

2. The circumstances which in our opinion justify making an advance on the present law are:—

(a) A girl below the age of 15 years is generally unable to give an intelligent consent to cohabitation with a due realization of consequences.

(b) Cohabitation at any age below 15 is generally extremely injurious to the health of a girl. Children born of such cohabitation are also very weak.

3. Yes, crimes of seduction and rape are frequent in this part of the country. The amendment of the law made in 1925 has not succeeded in preventing or reducing cases of rape or the improper seduction of girls. In order to make the law of rape and seduction effective and beneficial it is essential that the age of consent be raised to 15 years.

4. No, it has not been effective in protecting married girls against cohabitation with their husbands within the prescribed age limit in any way. The age of consent in this case must be raised to 15 years and wide publicity should be given to the amendment of the law. We would suggest that the amendment if made should be announced to the public by beat of drum in each Tahsil in every district, if we want to gain some immediate benefit out of it.

5. Among the low class Hindus the girls attain puberty generally at the age of 12 years, and among high class Hindus at the age of 13 years. Moslem low class girls attain puberty generally at the age of 13 years while the Moslem high class girls attain puberty at the age of 14.

6. In our part of the country cohabitation is common before the girl completes 13 years amongst low class. Such cases seldom come to court.

7. So far as we know early consummation of marriage before or at puberty has nothing whatsoever to do with any religious injunction.

8. 'Gauna' ceremony is common amongst the Hindus in this part of the country. It is performed generally after the attainment of puberty, but sometimes even before the attainment of puberty. This ceremony generally coincides with the consummation of marriage.

9. We do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify consummation. We are of opinion that there should be no consummation before a girl has attained the age of 15 years.

10. In our opinion a girl in India would not be competent to give an intelligent consent to cohabitation with a due realization of consequences before she has attained the age of 15 years.

11. Yes, innumerable cases. We do know of cases in which cohabitation before puberty has brought about phthisis, consumption, hysteria, and trouble with menstruation. Also, we know of cases in which cohabitation after puberty but before full physical development has produced consumption, phthisis, mental debility, etc., and has affected the progeny adversely.

12. Yes. The reasons are given in answer No. 11 above.

13. Yes, there has been, but it is generally confined to the educated men.

14. Hindu women in this part of the country do favour early consummation of marriage for their children.

15. Yes, considerable difficulty is often experienced in determining the age of girls in cases under sections 375 and 376, Indian Penal Code. Medical opinion is very often misleading and inaccurate. We would suggest that prosecution should prove age in such cases by producing extracts from the Municipal Birth Register or the village Chaukidar's book. Should it be found impossible to produce such extracts to prove age of the girls in respect of whom the offence of rape or seduction has been committed she should be subjected to a thorough medical examination with the help of X-rays by 3 doctors not below the rank of L. M. S. or M. B. B. S., the opinion of the majority prevailing. Should all the three differ from one another the court should exercise its own discretion.

16. Yes, we would certainly separate extra-marital offences from marital offences. Marital offences are of a light character and so the maximum punishment should not exceed a year's rigorous imprisonment while for extra-marital offences 7 years' rigorous imprisonment is enough as maximum punishment.

17. If the Age of Consent be raised to 15 years we think that the difficulty or margin of error will be materially reduced or minimised.

18. We do not think it necessary to make any other difference in the procedure of trials for offences within and without the marital state than that the investigation in both the cases should be made by a Police officer not below the rank of an Inspector of Police.

19. In our opinion the existing safeguards are quite sufficient.

20. In our opinion penal legislation would be more effective than legislation fixing the minimum age of marriage, and the former would find greater favour with the public. There should be no restriction regarding the age of marriage. The safe-guards are required in respect of the consummation of marriage only.

21. We would prefer to rely on the strengthening of penal law to secure the object in view. In our opinion it would take too long to secure the object in view if we rely on the progress of social reform by means of education and social propaganda.

**Oral Evidence of Mr. MOHAMMAD AFI KHAN, representative of the
Anjuman Islamia, Gorakhpore.**

(Benares, 10th January 1929.)

Chairman : Do you represent the Anjuman Islamia, Gorakhpur?

A. Yes.

Q. Are you a member of that?

A. Yes.

Q. How many members are there?

A. About 75.

Q. May we take this opinion as the opinion of the Anjuman?

A. Yes.

Q. You say that the law of the Age of Consent has not been effective in protecting girls below 13?

A. I don't think.

Q. Do you think there are a number of cases of consummation before the girl is 13?

A. Yes.

Q. Both among Hindus and Muhammadans?

A. Yes. Amongst the low class people that takes place. But most of the cases are not brought to light.

Q. What is the reason?

A. Nobody cares to report the matter to the police.

Q. You suggest that in the case of the same law the age should be raised to 14 or 15. There will be more prosecutions then?

A. Generally girls are given away in marriage at 15 or 16 among the high class people and 13 or 14 among the lower class of people.

Q. Do you mean to say that girls are married at 13 or 14 in Gorakhpur?

A. Yes. There are rarely any marriages at 6 or 8. Even among the lower classes they take place from 12 to 14. Among the higher classes the age is 14 to 16.

Q. Amongst the lower classes what is the earliest age of maternity?

A. I know cases of girls becoming mothers at 13 or 14.

Q. If we raise the age how are these cases going to come to light?

A. Raising the Age of Consent up to 15 will make a world of difference. When a girl becomes 14 her youth is in full bloom and girls are given away in marriage generally, as I have said, at 15 or 16 among the higher classes and 12 or 13 among the lower classes. There is a chance of more prosecutions.

Q. But how will they come to light? They are non-cognizable?

A. I have suggested that they should be made cognizable. But investigation should not be carried on by any one below the rank of Inspector of Police.

Q. Would you raise the Age of Consent to 15?

A. Yes.

Q. Making the cases cognizable in a delicate matter like this, don't you think, will mean a lot of trouble?

A. If investigation is conducted by the Inspector of Police I don't think.

Q. What is your objection to the law of marriage? Is it religious?

A. It will be irreligious. According to the Shariat there should be no restriction so far as marriage is concerned.

Q. Does it say that there should be any restriction with regard to cohabitation?

A. No, not at all.

Q. Then fixing the age at 14 will also be restriction. Is it not?

A. In one way it may be. I do not transgress the law of Shariat when I say that the Age of Consent should be raised to 15.

Q. But in both cases there is no injunction of the Koran one way or the other?

A. No.

Q. How do you think that it is breach of religion?

A. So far as marriage is concerned I think it is given that a girl may be given away in marriage at any age.

Q. After puberty you are entitled to consummation of marriage. Putting the age at 15 curtails their freedom because a girl may attain puberty at 12 or 13?

A. It does. But there is one more law of the Shariat. Nothing is irreligious if it is for the good of the humanity.

Q. Does that apply to marriage also?

A. But it is explicitly given that a minor may be given in marriage. There is no prohibition to marry a child girl.

Q. Will you admit that the breach of the law of Age of Consent even if you raise the age to 15 will not be discovered unless the girl becomes a mother below 15? There is no other way of deciding whether consummation has taken place or not. How is that fact to be known even to the police?

A. It is possible if there is any minute enquiry.

Q. You don't expect the police to make enquiry in every house wherever there is a girl?

A. We have to do this thing otherwise we cannot save so many persons who are dying.

Q. But it is not effective. The evil is there?

A. If the police try hard to discover, the cases may be found out. If the girl is sent to the husband's house there is the presumption that there is consummation, the police may go and enquire. "Rukhsati" should be stopped.

Q. Would you like that "Rukhsati" should be stopped till 15 by law?

A. That all depends upon the police. The police should make a thorough enquiry.

Mrs. Beadon : You have said in answer to question No. 11 that you know innumerable cases of injury as a result of early consummation. Would you mind giving us details of one or two cases?

A. I have seen some 10 or 12 cases in which the girl was married at the age of 12 in which the girl died of consumption later on. In some cases after a year and in some after 2 years and in others after 3 years.

Q. But the girl may die of consumption even if she was not married?

A. It was heard that there was some trouble with her menstruation and from that it was inferred that that was the cause.

Q. Have you seen any cases in which a young girl had a child and had trouble?

A. I have known some cases in which there was trouble at the age of 13 or 14.

Q. How many cases can you remember within the last 3 years?

A. I may have heard one or two cases.

Q. What was the caste?

A. There was one Muhammadan girl as well as one Hindu girl. They were both about 13.

Q. What happened?

A. The Muhammadan girl died.

Q. What about the babies?

A. The baby also died immediately within two or three days.

Q. Are you an advocate?

A. Yes.

Q. What about the children of these young mothers? Are they on the whole fairly strong and well off?

A. I don't think so. They are very weak.

Mrs. Nehru : Can you tell us whether your confidence is shared by the other people?

A. At least I can say about our Anjuman.

Q. Are they willing for the police interference?

A. Yes, somehow or other they would prefer this to premature death.

Q. If this power of investigation is given to certain committees appointed for this purpose would you prefer that?

A. Would they have the power of punishment also?

Q. No.

A. If they come strong enough that will be better. I don't think such a strong and powerful committee can be formed.

Q. If such committees are appointed by Government what is your objection to that? The object of the Committee would be only to bring to light such cases in which there is a breach.

A. Respectable men of the town would be like the police, I think that will be better, but I don't think it is possible. There will be difficulties. I don't think big men would like to investigate such matters.

Q. By big persons are you thinking of wealthy persons? Can you think of any public-spirited persons who for the sake of society will give time?

A. It is possible that with difficulty some men may come out.

Q. Will you prefer that arrangement to police?

A. I would, if that is possible.

Q. Among which class of people is seduction and rape very frequent?

A. Low class people.

Q. What do you mean by low class?

A. Chamars, Khaliks, Kevats and others.

Q. Is rape more frequent or seduction more frequent?

A. Seduction is more frequent.

Q. Are girls taken out from this province to other provinces for sale?

A. Sometimes this happens but it is seldom.

Q. Is seduction generally resorted to for the personal use of the man who seduces?

A. Yes.

Q. They are not sold?

A. No, they are not.

Q. You say there is a difference of one year in the attainment of puberty between the lower classes and the higher classes. The higher class of people get puberty later than the lower classes. Can you tell us the reason for this difference?

A. I think the girls of the lower classes are excited by the loafers.

Q. So far we have been told that higher class girls on account of their getting good food mature earlier.

A. That was my impression, but my experience shows otherwise. My experience shows that puberty is attained by low class girls at 12 or 13 and the higher class girls get it later.

Q. What is the reason of Muhammadan girls getting it later?

A. I can't give any reason for that. That is my experience. I say this thing because I belong to a Muhammadan family.

Q. You hear from women?

A. Yes, I am not a doctor and so I have not examined any cases.

Q. You have said that there is a change with regard to the Age of Consent among the educated men. Do you notice any change among women also?

A. I don't think women know anything of this. They don't know much.

Q. Was there any public meeting of ladies at Gorakhpur to consider this matter?

A. No.

Q. What is the state of women's education there?

A. It is not good.

Q. Are there girls' schools there?

A. There are primary schools and Government schools up to the 4th or 5th standard.

Q. Do Muhammadan girls go to these schools?

A. Yes; but a few only go to these schools.

Q. Do most of the Hindu girls go to the schools?

A. Yes.

Mr. Shah Nawaz : Are you against the law of marriage simply because it will deprive the parents and guardians of Muhammadan girls of the right of giving the girls in marriage when they are minors?

A. Yes; because the law of Shariat is explicit on the subject.

Q. There may be different interpretations and conflicting opinions even amongst the Muhammadans. Apart from the Shariat, what is your personal opinion as lawyer on it?

A. I do not think I can answer this question, because it will interfere with my religious principles.

Q. Do you not think that the main object of giving minors in marriage is the welfare of the minor?

A. Yes.

Q. According to Muhammadan law is it enjoined that girls should be married before they attain puberty?

A. No.

Q. Is it not against the Shariat that the husband should cohabit with his wife when she has not attained puberty?

A. It is not against the Shariat because it is not given in the Shariat.

Q. Do you think it is bad?

A. Yes, it is bad.

Q. Do you not think that the evil should be checked?

A. Personally I think it should be checked, but it is not against the Shariat.

Q. Does not Islam order you to prevent this evil?

A. If it is an evil, Islam must prohibit it.)

Q. Do you not think that so far as connection before puberty goes, it must be checkmated.

A. That is my personal opinion; but I cannot say anything about the Shariat.

Q. Amongst the Muhammadans in Bengal a large percentage of marriages are consummated before puberty. Do you think it is proper?

A. It is not proper, and it must be checked.

Q. How are you going to check it? Supposing we find that the only method is to penalise marriages, would you not go to that length? Do you not think it will be in accordance with Islam?

A. I think there are many other ways of doing it.

Q. Penalising of marriages by law is the easiest and the simplest way. Do you think there is any way of checking this evil without a law? Pre-puberty marriages amongst the Mussalmans are mainly for the welfare of the minor. When the evil is so widespread that about 65 per cent. of the marriages in Bengal and about 30 to 40 per cent. of the marriages in other provinces are consummated before puberty, do you think that Islam will say that it should not be checkmated?

A. I think the evil should be checkmated, but this is not the only way.

Q. What is the other way?

A. There are people who are advanced and they might carry on social propaganda.

Q. Supposing we find that a number of Muhammadans are wasting their property in prostitution, and we want to checkmate it by bringing in a law saying that no Muhammadan should alienate his property for immoral purposes, would that be against the Shariat or not?

A. I do not think it would be against the Shariat.

Q. Similarly if you find that this liberty in regard to the marriage which has been given by Muhammadan law has been so much set at naught or abused, do you not think that it is our duty to checkmate it?

A. Our idea is that in regard to marriage what is given explicitly in the Quran should be observed.

Q. Does not Islam say that one can alienate property at will? Have you heard of the Punjab Alienation Act? That is a law relating to the alienation of property passed in 1901. Do you think that we are not Mussalmans to have accepted it?

A. I think that if the Shariat says anything about any subject, it must be adhered to. Much good lies in that.

Q. Supposing you abuse the power given by the Shariat?

A. Then we should try to remove the evil from the people somehow or other; but that must not be against Quranic injunctions.

Q. But the Quranic injunction here is permissive. The Quranic injunction does not enjoin on you to give your daughters in marriage before they attain puberty. It is simply permitted for certain purposes. Supposing the permission is abused very largely by Mussalmans, are you going to take away that liberty or not?

A. I think I might refuse to answer this question on religious principles.

Q. You started the question of Shariat.

A. I said it is clearly laid down in the Shariat.

Q. It is only permissive power given to the legal guardian to give the girl in marriage before puberty. But my point is, supposing this power is abused, how will you prevent it?

A. But I think it is mandatory.

Q. It is not mandatory, because everybody is not obliged to marry his girl before puberty.

A. It is mandatory in the sense that the girl must be married after puberty.

Q. You say she must be married, evidently for producing children. And yet you want to delay to Age of Consent. If a girl attains puberty do you think that she must be married? What for?

A. For the procreation of children.

Q. Then why do you postpone consent?

A. Because that is for the safety of the girl. I do not want to answer any more questions on this point because there is the danger that I might embroil myself with the community.

Q. Do you mean to say that you are not prepared to answer these questions?

A. I have not consulted the Mullahs on this point.

Q. Do you mean to say that you being a lawyer, and I being a lawyer, we cannot interpret Muhammadan law? Muhammadan law allows the guardian of a girl to marry a girl before puberty when she is a minor for some reason or other. Cannot we then interpret it by saying that it is permissive?

A. I do not think that any such discussion is given in our Muhammadan law books.

Mr. Mitra : Do you belong to the Sunni sect?

A. Yes.

Q. Do you belong to the Hanafi Sect?

A. Yes.

Q. Is the payment of interest against Islamic scriptures?

A. Yes.

Q. If a man brings in a Bill to the effect that interest should not be charged at more than a particular percentage on the capital lent, would it be against Islamic scriptures?

A. Yes.

Q. Do you know that Abu Hanifa has suggested 18 years for consummation?

A. I believe he has said it is up to 17.

Q. Is it not a fact that his two disciples recommended 16?

A. Yes.

Q. Will it be far wrong to infer from this that these Muhammadan authorities recommended at least 16 for consummation?

A. Yes: in the absence of any signs of monthly course. Then puberty will be presumed.

Q. And have any other Imams like Shafi, Hambali or Malik suggested anything about consummation?

A. Nothing.

Q. Is it not the spirit of the Islamic law then that consummation should take place at about 16?

A. There is nothing definite or fixed in it about the age.

Q. Is it correct to say that when the Imams have suggested that it should not be less than 16, the Muhammadans should agree to it?

A. Yes.

Q. You say that there is no way of making the law of consent effective. Can you then suggest any other method by which consummation before 16 can be prevented?

A. It is not possible.

Q. If you really agree with the spirit of Islam, unless there is anything against it, do you not think that the age should be fixed at or about 16?

A. I do not think that any age can be fixed, because it is explicitly given there that a girl can attain puberty from 9 to 17, so that if the girl attains puberty there may be consummation.

Q. Are you against compulsory primary education?

A. No; not on principle.

Q. Are you against a law for the prohibition of drink?

A. No.

Q. Are they not against personal liberty?

A. Yes.

Q. Do you therefore mean to say that you are not on principle opposed to marriage legislation?

A. Here there is a conflict with religious injunction, and I therefore refuse to answer it. I do not want to give my personal opinion where there is an explicit law in the Quran.

Mr. Yakub: What is the law in the Quran which you refer to as being explicit?

A. That a minor can be married.

Q. Is it given in the Quran that a minor can be married?

A. I have read it in the books on Muhammadan law written by Tyabji, Mullah and others.

Q. Have you read any book written in Arabic?

A. No; I have read books on Muhammadan law in English.

Q. Have you read Hadiz?

A. Yes; in Urdu.

Q. Are you in a position to express your opinions about questions relating to Muhammadan law?

A. Yes; I might answer, if there is nothing in it which is against my religious principles.

Q. Are you so much learned in Muhammadan law that you are in a position to express your opinion as an expert in Islamic law?

A. No.

Q. Have you consulted any of the Ulemas on the subject?

A. I have consulted some Ulemas. (The witness here handed over to Maulvi Md. Yakub some papers which he said he got from a Maulvi.)

Q. There is no reference in these papers about marriage. The only principle of law to which you have referred is that according to the Quran parents are at liberty to marry minor girls.

A. Yes.

Q. How then do you differentiate between a law of the Age of Consent and a law fixing the age of marriage? Both of them interfere with the liberty which is given to you according to Islamic law.

A. I have already said that I object to fixing the age of marriage because there is an explicit reference to it in the Quran. As regards consummation there is nothing.

Q. Is it your opinion that if there is nothing for or against any principle in Islamic law you can enact any law about that matter and it will not be considered an interference?

A. I do not think so, because the law of consummation as it is to-day fixes the age at 13, and that already interferes.

Q. Did any Muslim object to the passing of the law when it was enacted?

A. No; not before.

Q. So may I take it that the raising of the Age of Consent was not considered by the Mussalmans to be an interference?

A. I do not consider it is an interference.

Q. Are there any Ulemas in your Anjuman?

A. Yes.

Q. When was your Anjuman formed?

A. 16 or 17 years ago.

Mr. Bhargava : At present the age in extra-marital relations is 14 and intra-marital relations 13. Witnesses have suggested that the age in extra-marital cases might be raised to 16 or 18, and nobody opposes. I would like to know the views of the Anjuman and yourself on the matter. Supposing a stranger has intercourse with a girl with her consent, at what age do you consider the girl is capable of giving an intelligent consent understanding the implications of such consent?

A. I do not think before 15.

Q. Would you raise it further? In section 363, Indian Penal Code, it is 16, and it is 18 under section 366A, Indian Penal Code.

A. It can be 16.

Q. Do you realise that the fixation of any age for extra-marital relations is against the Shariat?

A. But then there is already a British law on the point.

Q. Supposing the law is not against the spirit of Islam and there is already a law for the welfare of the community, would you be in favour of the law?

A. In so far as the religious point is concerned, I would not favour it; but there is already a law and it cannot be helped.

Q. Leaving aside the Muhammadan stand-point, would you like that there should be a law for the Hindus, supposing the Hindu Shastras are not opposed to it?

A. Yes; if the Hindu Shastras are not opposed.

Q. So that your sole objection is the religious question. Otherwise you are not opposed?

A. I have said that I cannot express any personal opinion on these matters where there is an explicit law.

Q. Am I correct in inferring that Balugh is the period when consummation of marriage is allowed, and it is the period which is indicated by the onset of the menses by the declaration of the girl herself?

A. Yes.

Q. May I also take it that according to the explicit text of the Quran any age which is beyond puberty is an interference with Muhammadan religion?

A. I would construe it by saying that nothing is bad or against Muhammadan law unless it is opposed to Muhammadan law.

Q. Do you know anything about the condition of Arabia when this law in the Quran was written? Were there early marriages in those days in Arabia?

A. I do not think.

Q. Then do you realise that this law was propounded not with a view to do away with early marriages but to be the rule of conduct in a normal state of society?

A. Yes.

Q. So that if there is nothing in the Quran, should you not find a way out?

A. Yes; if there is nothing in the Quran.

Q. Do you not think that people are at liberty to find out solutions according to the changing circumstances?

A. Yes; but consistent with equity, justice and good conscience.

Q. Would you like to have a provision in the law analogous to section 107 of the Criminal Procedure Code, saying that whenever the court is satisfied that the commission of the offence is likely to occur, the court may call the parties and order the separation of the husband and the wife with a view to prevent the commission of the offence?

A. Yes; if there is nothing in the Quran against it.

Q. As regards the investigation of the police, have you attended any investigation yourself?

A. Yes; I have.

Q. Have you attended cases in which it is the bounden duty of an Inspector of Police or a superior officer to conduct the enquiry?

A. Never.

Q. Do you not think that even if a provision like this exists, the subordinate officers conduct the investigation in the name of the superior officers?

A. It may be.

Q. Do you not think that this provision will be nugatory?

A. We should move the Government to see that this provision is strictly followed.

Q. There are some non-cognisable cases in which the Magistrates themselves enquire into the offences. What is your objection to these cases also being enquired into by the Magistrates?

A. It will be better.

Q. You say that there is a large number of pre-puberty marital cases both amongst Muhammadans and Hindus. What will be the percentage?

A. About 50 per cent.

Q. Is it in rural areas, or in towns, or in both?

A. They are more in rural areas.

Q. Is it in Gorakhpur or in U. P. generally?

A. I know it is so in the Gorakhpur division.

Q. Is it found even amongst Muslims?

A. A few cases amongst Muslims, but mostly amongst Hindus of the lower classes.

Mr. Kadri: What are the objects of your Anjuman?

A. To promote good feelings between Muhammadans, and give them religious as well as secular education.

Q. Have you got social reform also?

A. Yes.

Q. Has your Anjuman carried on any propaganda against early marriage by way of social reform?

A. We have not done anything in that direction. We might take steps.

Q. Was the statement discussed at any meeting of the Anjuman?

A. These things were read and explained to the members of the Committee and they approved of it.

Q. You say in paragraph 2 (a) of your statement that a girl below the age of 15 years is generally unable to give an intelligent consent to cohabitation with a due realisation of consequences. Do you realise that according to Muhammadan law marriage is a civil contract, and do you think that it is fair for a girl to be given in marriage before she can know the meaning of the contract which she is entering into?

A. So far as the marriage contract is concerned she can form an opinion about it.

Q. Do you know that Bizavi says that the age of marriage should be 18?

A. I have not read that.

Q. Will you accept it if Bizavi says that?

A. I will look into other books and see what others have to say on the matter.

Q. According to Muhammadan customs at present, the girl is sent to her husband immediately after marriage no matter what her age is. Is that not so?

A. Generally it is so.

Q. Is there any subsequent ceremony analogous to the Gaona ceremony amongst the Hindus?

A. Yes; in U. P. there is. I was married in 1911, and there was another ceremony in 1912.

Mr. Kanhaiya Lal : At present cases under 12 go to a Sessions Judge and above 12 they go to a Magistrate. Supposing instead of having these two different forums we have a matrimonial court consisting of a Magistrate and two non-officials associated with him, do you not think that will create public confidence?

A. Yes.

Q. Would you like these non-officials to be associated as assessors, jurors or as co-judges?

A. I would have them as co-judges.

Q. Do you think that suitable non-officials will be forthcoming to act as co-judges?

A. Yes.

Q. Would you recommend that these marital cases might be allowed to be compounded with the sanction of the court in order that good relations might be restored between the husband and the wife? Would you like the cases to be compounded in suitable cases?

A. I do not think there should be compounding.

Q. But the Magistrate will refuse compounding in cases in which there is a serious injury.

A. Then the cases might be allowed to be compounded with the permission of the court.

Q. It has been suggested that in order to support the law of consent we might have a marriage register giving the ages and the names of the marrying parties so that we might know when there is a danger of the law being broken. Do you agree?

A. I am personally in favour of it.

Q. Who do you think should be the registering authority?

A. The Secretary of the Municipal Boards in Municipalities, and the District and Rural Boards in rural areas.

Written Statement, dated the 18th August 1928, of Pandit Shree SADAYATAN PANDEYA, M.L.C., Chairman, District Board, (Mirzapur), Ahraura.

1. No dissatisfaction.

2. (1) The law as it is should exist for some time, before people adjust themselves for an advance on it.

(II) No advance seems necessary in the present state of our social evolution. Better and intelligent classes are in minority and they have begun to marry their sons and daughters at full age long before the existence of the law.

3. The crimes of seduction or rape are not frequent in this part of the country. The crime of rape was never so common as to reflect any credit on the amendment of the law made in 1925 to prevent or reduce it. The seduction of girls for immoral purposes has not been affected in any way by the law. This would probably happen at some distant period when not only the Age of Consent is raised, but the age of marriage sacrament itself is raised. Improper seduction can be materially reduced by taking stringent action against agents of immoral traffic, particularly public women who ensnare young widows and girls and put them into ignoble profession.

4. The amendment of 1925 has not achieved anything as yet, as there is yet no sign of change of mentality, or knowledge of the law in general.

5. The usual age of puberty here is 13; it is different in different castes, communities or classes of society.

6. (i) Not common.

(ii) Common.

(iii) Rare.

Cases not coming to court.

7. It is in a small measure due to religious injunctions which probably aimed at safeguarding honour and protection at some period in the history of our race, but the most sacred texts of Manu prescribe 16 years as the marriageable age of girls. The early consummation is done more as a custom than on any religious injunctions. In a country where it is for parents to make a proper selection of husbands for their girls, the sooner they do it the more contented they are to be off their responsibility. There is no penalty for breach as poor parents in higher castes who have to make big presents in marriage defer marriages considerably till they are economically sound to lavish expenses for it.

8. Goana ceremony is performed with much zeal and show. It coincides with consummation of marriage. It is generally performed after the attainment of puberty, generally a year or two after puberty. In labouring classes there is no question of age, whenever the husband's side presses, the girl goes in Goana but this is to help them in their avocation rather than for consummation.

9. Puberty is not sufficient indication of physical maturity to justify consummation. It is simply a sign that the cycle of life from girlhood to womanhood has set in. 16 years girl is well-developed for consummation and propagation of healthy race.

10. 16 years.

11. My experience as a public man, magistrate and zemindar testifies that very young girls with their babies is a sickening sight. The girls are perpetually ailing and the children are sickly, small in stature, ill-developed in constitution and generally die.

12. I consider early consummation and early maternity not only responsible for high maternal and infantile mortality, intellectual and physical deterioration of the people, but chiefly responsible for social misery, and great economic drain sustained owing to performing marriages too often and spending large amount of money for medication.

13. There is yet no developed state of public opinion. These questions are confined to certain classes.

14. Women do not favour early consummation but they are helpless in a vicious cycle, when marriage and Goana are performed by the force of custom or religious injunctions, they don't find any virtue in restricting their sons to see their wives when they have come to live with them.

15. There are difficulties in determining the age. In cases of difficulty not only the age but the physical development and mental state also should be taken into consideration.

16. Yes.

17. Yes, I would separate. For extra-marital the punitive laws are sufficiently strong and effective. For marital cases it should be treated as misdemeanour till the time public opinion grows stronger, and the people are understanding their responsibilities fully well. It should be made incumbent on husband to provide sufficiently for food, and medical treatment and there should be a judicial separation till the time she is fit for consummation.

18. Yes, for extra-marital as they are done heretofore, but for marital a Magistrate not below 2nd class powers in conjunction with the village Panchayat.

19. The proper safeguard is to announce the age of the girl at marriage, the period of Goana and consummation can be easily calculated afterwards.

20. The former is more reasonable, the latter is more practicable. The latter would be more suitable.

21. I prefer the hands of law partly to secure protection for the offended and the social workers to justify their preachings done in the interest of women and the State.

Oral Evidence of Pandit Shree SADAYATAN PANDEYA, M.L.C., Chairman, District Board, Mirzapore.

(Benares, 10th January 1929.)

Chairman : How long have you been Chairman of the District Board?

A. 6 years.

Q. What is the age of marriage amongst the communities in the part of the country in which you live? Are the ages different amongst different communities?

A. I have not marked any great difference in the marriageable ages in the different communities. But as people have advanced in thought and education there has been improvement in the fixing of the age of marriage.

Q. What is the age of marriage now?

A. Generally people marry their girls between 12 and 14.

Q. And boys?

A. 16 to 18. In this connection I may tell you that this morning a Brahmin came to me with his son. The boy was not more than 12, but he had been married. But I was all the more shocked to hear that his Gaona ceremony was going to be performed shortly. I asked him to defer it till 17 or 18.

Q. Are there a large number of child marriages below 12 amongst the lower classes?

A. I know of many child marriages which have taken place at the age of 4 and 5 of the girls. It is mostly amongst the Kumbies, Kachis and the Kohars and people like that.

Q. Do you think that consummation follows soon after puberty?

A. It does.

Q. Do you think most of the girls are consummated before 14 complete?

A. Yes; 50 per cent. of them are consummated between 12 and 14.

Q. Are there a large number of girls who attain puberty after 14?

A. There are very many who attain puberty before 14, and many after

Q. Would it be half and half?

A. Yes.

Q. Have you reason to think that the law of the Age of Consent now at 13 is broken in many cases, that is, does consummation of marriages take place in many cases before 13?

A. Yes.

Q. Is it very common?

A. I think it requires gathering of statistics to give a definite answer. But I think on the average it will be 20 to 25 per cent.

Q. Do you think that the law of marriage would be more effective than the law of the Age of Consent?

A. Yes.

Q. Would you keep the law of the Age of Consent as it is and not increase it, because it will not be effective?

A. It may be effective later as public opinion grows stronger.

Q. Do you want the age to be raised?

A. Yes; it may be raised to 15.

Q. If you have a law fixing the age of marriage, what age would you suggest?

A. I would have 14 for girls and 18 for boys. As far as I am concerned I would start with 14 and would gradually increase it.

Q. What age would you have for extra-marital relations?

A. I would have 16.

Mrs. Beadon : With reference to paragraph 11 of your answer can you tell us whether you have come across any cases in which there has been injury?

A. In my capacity as a Magistrate I do not get such cases because I am only a second class Magistrate; nor have I come across such cases in my private capacity.

Mrs. Nehru : What is the punishment you would like to have for marital offences? Would you like to retain the present punishment, even when you raise the age to 15? At present under 12 it is 10 years and between 12 and 13, 2 years. Would you like to have the same punishment between 12 and 15?

A. Yes; I would retain the present punishment.

Q. Do you think it is too much, because you have to take into consideration the welfare of the girl?

A. I am in a dilemma. 2 years rather appears to be too much in cases of legal married relations. I would therefore have only simple imprisonment and fine.

Q. There is a suggestion that a bond can be taken from the husband to keep the girl separate from him till the prescribed age, and punishment might be awarded for the breaking of the bond. Do you agree?

A. I think that would not be sufficient, but I will agree to it if you make the breaking of the bond punishable. But I think bonds might be taken from the parents of the boy and the girl.

Q. If the boy is a minor bonds will be taken from the parents, but if he is a major then the bond will be taken from him and he will be held responsible.

A. I agree to it.

Q. To whom would you give the right of complaint? At present anybody can make the complaint.

A. Yes; anybody might be permitted to make a complaint.

Q. Would you like the cases to be made cognisable?

A. Yes.

Q. Do you not think there will be police interference if the case is made cognisable?

A. Police interference will not be conducive, but I think it will be essential. At the same time I am afraid there will be much corruption.

Q. Do you not think that the police at present are not so trustworthy?

A. Yes; but if you are going to make the cases non-cognisable how will you start the case?

Q. At present anybody may complain, but as you know nobody has made use of the law. Do you think if power is given to certain recognised organisations, it will be effective?

A. I think that would be much better. The general public would not ordinarily like to report such cases, because it is not so advanced in education and social thinking.

Q. Do you think that people are advanced enough to help such organisations in their work?

A. As education is spreading this thought is taking firm root amongst the less educated and illiterate people.

Q. Do you think that such organisations will not be harassed by the people?

A. At the start they might be harassed, and they might be somewhat unpopular; but they will get used to it as time goes on, and there will be no more fuss about it.

Mr. Nawaz: Will there be serious agitation if the law of the age of marriage is passed as indicated by you?

A. I do not think.

Q. Will it be accepted by the members of the U. P. Legislative Council?

A. Yes.

(The Witnesses here handed over to the Chairman a copy of the Book "Hindu Ethics", by Babu Bhagvandas and said that it contained some slokas of Manu which meant that a girl of 20 should be married to a boy of 30. The witness said that there was a different interpretation of the sloka).

Mr. Bhargava: Do you know that some of these slokas have been interpolated subsequently?

A. Yes; some people hold that view.

Q. Then what is the use of trying to interpret it in a different way when you can as well say that it is an interpolation? Do you realise that the Vedas only contemplate late marriages and not early marriages?

A. I have not read the Vedas, and so I am not able to say anything on that matter.

Q. Do you know that Goana did not exist formerly, but it is only a later ceremony?

A. Yes. Formerly four stages of life were prescribed and after the student life there was the entry into family life. That life began in boys at the age of 24.

Q. Do you believe that Hinduism is a scientific religion and as such it could not have countenanced any early marriage like that?

A. Yes.

Q. What is the usual difference between the age of the boy and the girl amongst the low class people who have early marriages?

A. Sometimes the age of the girl is more; generally the ages are equal.

Q. In some cases does it happen that the boys are a year or two older?

A. Yes. It is not only so in the lower classes, but it is also in the Bhai classes, and the Kshatriyas and Thakurs, because they cannot get suitable husbands for their girls.

Q. Would you subscribe to the statement that a boy of 14 is incapable of intercourse?

A. Yes.

Q. Then is not your statement that about 50 per cent. of the marriages are consummated before puberty wide of the mark? According to you sometimes the girls are older than the boys and a boy of 14 is generally incapable of committing the act.

A. He might be able to commit the act, but unsuccessfully.

Q. Do you mean that these connections do not take place to that extent?

A. Yes.

Q. You say that punishment in the case of marital relations should be bonds in the first instance and failing that there should be punishment. Is it not so?

A. Yes.

Q. But then we were considering the case of young boys. But generally it happens that widowers marry young girls and consummation follows. Do you think that in those cases if the girl is pregnant there should be no punishment?

A. That is a different case.

Q. What punishment would you have then?

A. 2 years would be sufficient.

Q. You say that organisations might be given the power of complaint. Are there any such organisations in U. P. who might be entrusted with this power?

A. There is a Seva Samiti at Allahabad; but I do not know of any other organisations.

Q. Would it not therefore be better to retain the law as it is and allow anybody to make a complaint *plus* allow such organisations to make complaints?

A. Yes.

Q. You are in favour of a judicial separation for a certain period. Supposing there is a provision of law like the one (107) in the Criminal Procedure Code to the effect that if a Magistrate is satisfied that an offence is likely to take place when the husband and the wife are brought together, then the Magistrate can ask them to give a bond and separate, and if they do not separate a penalty might be imposed. Would you be in favour of such a provision as a preventive measure?

A. Yes.

Mr. Kanhaiya Lal: Would you be in favour of a system of reporting marriages to a prescribed authority giving the names and the ages of the marrying parties so that we may be able to find out where the law is being broken?

A. Yes; marriages might be registered on the analogy of births and deaths.

Q. Who should be the authority to maintain these registers?

A. In urban areas the Municipal boards; but in the case of rural areas it will be difficult. I do not think village Panchayats would be satisfactory for the purpose.

Q. Would you employ the same agency that is now employed for the registration of births?

A. It is not satisfactory.

Q. Would you employ separate registrars for the purpose in each district?

A. I do not think one or two registrars in each district would be sufficient.

Q. Then what agency would you recommend for rural areas?

A. I think the appointment of registrars as you suggest would be the best means.

Q. Would you further recommend that a free marriage certificates should be issued to the marrying parties so that they may keep them for the purpose of record?

A. Yes.

Q. In the same way, would you recommend the issue of birth certificates so that they might be kept as a record of the ages?

A. It will mean much difficulty in the case of villagers, because most of them are illiterate.

Q. Would you like to make marital cases compoundable with the permission of the court?

A. Yes; because the parties are legally wedded and already maintain the relations of a husband and wife.

Q. At present under 12 the cases go to a Sessions court and above 12 to a Magistrate. Do you recommend that such cases can be tried by a matrimonial court consisting of a Magistrate and two non-officials associated with him?

A. Yes; it is quite good.

Q. Will it inspire greater public confidence?

A. Yes; these marital cases would then be secluded from the ordinary courts. I think it would be best.

Q. Would you have these non-officials as assessors, jurors or as co-judges?

A. They ought to be co-judges. Of course they ought to be men of superior standing with some qualifications.

Q. Do you think suitable men will be available to act as co-judges?

A. Yes; they would be.

Written Statement, dated the 31st December 1928, of Rai Bahadur VAIDYANATH DASS, B.A., Banker and Zamindar, Cantonment House, Benares.

1. The answer to this question particularly depends upon the education, training and freedom of women. Provinces in India differ to a great extent in the above conditions, as for example, Bombay, Madras and the Punjab. Where there is no purda system, rape cases are wonderfully low. The age consideration is of much importance in Northern India and specially in the United Provinces of Agra and Oudh owing to the social barrier and inability of women to mix in society. My opinion, therefore, is concerned chiefly with the social, educational and communal state of boys and girls in these provinces.

The age limit of 14 or below it is not what is at present wanted. Though it is true that girls below 14 can realise as to what they are going to do, but they are incapable of understanding the consequences that will follow their action till the age of 16 or above it. Sixteen or above can safely be put as a period when complete understanding as to consequences that will follow a particular action comes to a human being. Further, the present age limit of 14 cannot save a girl from fraud or seduction. It is too tender an age according to the present conditions, for a girl to be always alert and cautious. If the present age limit be raised to sixteen, there will be less possibility of fraud and seduction, which are many a time used in rape cases.

2. (a) I am not in favour of retaining the law as it is.

(b) I have already stated my reasons for making an advance on the present law in my answer to question 1.

3. (a) Yes.

(b) Not to a very great extent.

(c) The law can be made effective, if the legislators look into the point from the light of Hindu sentiment on the crime of rape, adultery, etc. This is the gravest crime what the Hindu Law says. The age of 14 or 16 cannot be enough unless the girl is sufficiently alive to her interests to give her consent or not to the criminal action—a girl who is sufficiently experienced as to the consequences of the crime referring to her own self-degradation and to the family and community to which she belongs. It is not only a question of legal punishment, but there is still a question, equally important, of social and religious punishment. A Hindu girl, when deprived of her chastity by a non-Hindu or by a Hindu of whatever caste he may be, is ex-communicated from her community and has to pay a heavy penalty to her priest, while the man is punished under law. Therefore I am of opinion that the law should be such, if a change is going to be made at all and if it is meant to be effective, as to raise the Age of Consent for rape cases to 19 years, considering the circumstances which I have noted above with reference to the social, educational and communal drawbacks, and social and religious conditions of these provinces.

But if the age limit be raised to 16 even, the offenders will have less opportunity to coax or to seduce the girls easily.

4. The law has been effective to a very little extent. As far as I know, not a single case has been brought in this city by a wife against her husband for cohabiting with her before 13 years, nor the parents bring such cases because they do not like to incriminate the members of their family.

As regards 4 (1), it is very difficult to state its answer. Marriages generally take place after 11½ or 12 years, and nobody knows what is going on within the zenana. Though Gaona ceremony takes place in majority of cases, but very few know about the age of the bride.

As regards 4 (2), public opinion is becoming strong in marrying girls at 13 or later than that. But generally speaking the public neither knows nor cares to know the law. Even if any such case may occur in any family, it is least possible that the case will be brought to the notice of the authorities.

As regards 4 (3), this is being done in some castes, or rather in some families. The prevalent religious idea that girls ought to be married before puberty still has got much hold upon the people and therefore legal authority is outweighed by religion. Further, in certain communities marriages generally take place when girls are only of 4 or 5 years.

My proposals.

In order to make the law effective, I make the following suggestions:—

(1) A Marriage Registration Office should be opened.

(2) A register keeping regularly, simultaneously with that of the Municipal Board, the date and name of every child born in each year datewise should be maintained.

NOTE.—It is generally found that the child is not named on the date of his birth and therefore the parents cannot give the name of the child then. Consequently, a provision should be made that the child's name be registered within three years from the date of his birth.

(3) At the time of marriage, the names of the bride and of the bridegroom and their respective ages with dates of birth and place be reported in the office. Then the calculation should be made

and if the girl be above 13 years, she may be allowed to be married.

NOTE.—The office need not be turned into a court and no judicial proceedings need be taken. It should be a sort of executive office but separate from the Municipal Board.

- (4) On being informed, the office should issue a writ of permission. In cases where it finds that the girl's age is below 13, it should issue a notice forbidding the parents to marry her.

If the parties persist in their action an injunction duly signed by the Sessions Judge be served upon them to resist from the marriage, otherwise they will be prosecuted for contempt of court.

NOTE.—This law should be made uniform throughout India, because many a time inter-provincial marriages take place. By this I mean that the bride belongs to one province and the bridegroom to some other.

SPECIAL NOTE.—If the above suggestion be considered not practicable, then the only way to make it effective is to educate the public opinion of the zenana of the country.

5. They attain puberty at about 13 years.

6. (1) Yes, in the illiterate class.

(2) Yes.

(3) Yes. Generally cohabitation begins by 13 years. As far as I know, such cases are very rare.

7. As far as I know, no religious injunction exists for consummation of marriage; it exists only for marriage. The principle is that consummation of marriage should take place after puberty.

8. (a) Yes.

(b) It generally coincides with the consummation of marriage; it is very seldom anterior to it.

(c) Yes.

(d) It depends upon the consultation of stars according to the horoscopes of the person concerned.

9. (a) Not in every case.

(b) The answer to this question must be very uncertain. No cut and dried rule can be passed in answering this question. The physical development is a question which is concerned with the general health of the girl; what time an unhealthy girl can take to acquire sufficient physical development cannot safely be ascertained. The time and age of puberty also vary according to the climate and place of the country. Therefore nothing can be said definitely on the point. If the health is bad, care and precaution should be the fundamental points to be taken either by the parties concerned or by the guardians.

10. The answer to this question is already given in my general remark given above, but ordinarily speaking 16 may be taken to be the approximate age.

11. (a) Yes. In families where proper guardianship is not exercised cases of this kind occur.

(b) The answer to this question is most uncertain. Generally the injury sustained is under 12 years, or if the health is bad it may be above. The injury is of various kinds; it may be mental or the heart may be affected, or there might be some uterine complaint and so on.

Generally women of the urban area suffer from the following diseases:—

(1) Indigestion.

(2) Constipation.

- (3) Leucorrhœa.
- (4) Weakness of the eyes.
- (5) Cramping.
- (6) Shivering and cold sensation.
- (7) Consequently, general debility.

12. Yes. But in addition to that there are equally important points to be considered which affect the intellectual and physical development of the people, viz.:—

Poverty. Want of sufficient nourishment. Unhealthy Municipal arrangements for hygiene. Municipal department wanting in supply of sufficient doctors to look after the maternity cases.

This question can be divided into two parts, men and women living in the rural area have sufficient vitality to cope with such difficulties which is greatly wanting in the urban area owing to congestion and other municipal drawbacks in the proper administration and care of health.

13. There has not been much development of public opinion about the extension of the Age of Consent in the social circles of the household, because there has not been sufficient education in the zenana. The public opinion may be traced in the law courts, where the officers have to meet puzzling arguments, about the certainty of the age of a tender girl of 13 or 14 years of age. It generally happens that a girl of 12 or under 12 may be proved to be 13 years old or one below 14 may be considered as one of 14. Generally it happens that cases of this kind come before the court from lower classes and very rarely from the upper.

14. Sometimes.

15. (a) These difficulties have been experienced by the court officers, who have to depend upon the nature of evidence.

(b) To advance the age limit.

This difficulty can also be solved by the adoption of my proposal made in my answer to Question 4. The court can summon the register and find out the exact age of the girl concerned.

16. Yes.

17. (a) Yes.

(b) In case of marital offences, if the husband has sexual intercourse with his wife before the marital age limit he should be punished only to 10 years imprisonment with fine.

In case of extra-marital offences, the provisions of the Indian Penal Code are up the mark.

18. Nothing except already provided in the Criminal Procedure Code.

19. No further safeguards, other than those provided for in the Indian Penal Code, are necessary.

20. (a) Penal legislation may fix a higher age of consent, which is likely to be more effective than fixing the minimum age of marriage. The marriage in India, so far as the Hindus are concerned, is treated as religious and social duties for the parents or guardians to perform at a certain age without any consideration of puberty or not puberty or any limit of age. In different castes different age limits for marriages are observed. In some castes like Kurmees, a girl of 4 or 5 may be married with a boy of 6 or 7. Further in the Brahman community a bride of 9 years or below may be married with a bridegroom of 12 or 13. So it is very difficult to fix a minimum age of marriage in India where so many castes, creeds and nationalities, such as Hindus and Mohammadans, etc., reside. The legislation has in fact no hold upon the people.

(b) The former.

21. I can rely to achieve the object under consideration on the progress of social reforms by means of education and social propaganda.

Oral Evidence of Rai Bahadur BAIDYANATH DASS, Banker and Zamindar, Cantonment House, Benares.

(Benares, 10th January 1929.)

Chairman : Are you in favour of making an advance in the law of the age of consent?

A. Yes.

Q. What would you have for extra-marital relations?

A. I want to raise the age to 16 or above as the case may be in different provinces. In my province I want it to be 18 because I find that a girl of 16 here is not sufficiently ripe in experience to know the consequences.

Q. The present age of consent in marital cases is 13. What would you have it at?

A. 16.

Q. Would you prefer that to a law of marriage?

A. Yes.

Q. Is it because the law of age of marriage restricts the freedom of the people to marry their girls at any age?

A. Not necessarily because of that. In my opinion penalisation is necessary. Consider our social condition now. Formerly there was religious penalty, but it has become obsolete now. Therefore there should be legal penalty.

Q. If you fix the minimum age for marriage, then in case of breach of the law the parents would be punished?

A. I want that the parents should be punished if the marriage has taken place before the age fixed.

Q. What would you have as the minimum age of marriage?

A. It would be difficult to answer because at present among the Kunbies, Kohlies and others marriages take place early.

Q. But it is specially with a view to put this evil down that we want to fix the age.

A. I think it ought to be between 14 and 15.

Q. For boys?

A. Between 16 and 18.

Q. To make the law of consent effective you have suggested certain methods. You say "On being informed (of the marriage) the office should issue a writ of permission. In cases where it finds that the girl's age is below 13 it should issue a notice forbidding the parents to marry her." Do you mean that a licence should be obtained before marriage?

A. I said that there should be a marriage register.

Q. Do you not think that it will be a difficult and a tedious procedure to ask people to go long distances to district magistrates or other prescribed authority to obtain the writ of permission?

A. We are out for reform. Unless some measure of that kind is adopted it will be very difficult to make the law effective.

Q. Do you not think that it will be troublesome to people?

A. It will be troublesome because most of the people will not know whether there will be necessity to take permission or not. But then they will realise that they should not marry before 13.

Mrs. Beadon : With reference to paragraph 11 do you know of any cases in which there has been injury?

A. No.

Mrs. Nehru : You say that neither the parents of the girl nor the relations would come forward with complaints against the husband. Supposing there is no marriage law, how do you think we can get over this difficulty?

A. All I can say is that unless there is sufficient education cases will not be brought to light. The ladies in our houses are treated like slaves and they cannot be expected to bring the matter to light. Also there is so much delicacy about the matter.

Q. You say that nobody knows the age of bride. Can you tell us why the age is concealed?

1. It is known; but generally it happens that the priests if they can find a good match in a good family conceal the age. But it happens only in rare cases.

Q. To whom would you entrust the power of keeping these registers?

A. I want some responsible officer or some respectable body of persons to be in charge of it. I want that only municipal boards and district boards should be given this duty. They may be in charge, but I do not want to rely on them solely but would like to have some supervising officer.

Q. What is your reason for not trusting these municipal and district boards?

A. My reason is that they have so much work which they are not attending to properly and this will be one such thing more.

Mr. Shah Nawaz : Are you in favour of a law of marriage?

A. Yes; I would have 14 for girls; in any case not lower than 14.

Mr. Mitra : Do you think there will be opposition from the orthodox community?

A. I think there should not be, because they are at the bottom of all this mischief. These people are presumed to be orthodox, but they are not really so.

Q. Do they realise the evils of early marriage?

A. No; any Pandit will say that a girl should be married at 9 because she is then a Gowri.

Q. Do they marry their girls before 12?

A. Sometimes when they get a good match they marry their girls even at 9.

Q. In cases in which girls are married late, is there social oppression?

A. No; In our own community we have raised the age of marriage and girls of 16 are sometimes married, and nobody raises any objection.

Mr. Bhargava : Did any conference of your community fix any age for marriage?

A. The All India Agarwal Conference was held last year at Allahabad, but I do not know what resolution was passed there. As far as I know boys lower than 18 should not be married.

Q. In 17 (b) you say that the punishment in marital cases should be 10 years whereas the present punishment is only 2 years between 12 and 13. Would you like to alter the punishment?

A. I think I made a mistake. I would like to retain the punishment as it is.

Q. You say that a Hindu girl, when deprived of her chastity by a non-Hindu or by a Hindu of whatever caste he may be, is ex-communicated from her community and has to pay a heavy penalty to her priest, while the man is punished under the law. How is the priest paid?

A. In such cases like this if there is some illicit connection between the parties, apart from the legal punishment, there is social punishment also. A Prayaschit will have to be performed, otherwise she will not be taken back into the fold of her caste and will be outcasted.

Q. Is the boy outcasted also?

A. Yes; those who are religious think that the boy should make some Godan and go upon a Yatra.

Q. Do you know of any cases in which a girl whose chastity had been violated underwent the Prayaschit and paid the priest?

A. I know of a case in which she was ex-communicated.

Q. What happens to the parents?

A. The parents have nothing to do with it.

Q. What happened to the girl? Did she go away with the non-Hindu?

A. Yes; she must go.

Q. You say that children's names should be registered within three years after the date of their birth. Do you not think there will be confusion, because by that time another brother or sister might be born to the child. Why not therefore have it after three months?

A. Yes; you might make it three or six months instead of three years.

Mr. Kanhaiya Lal: Would you advocate a system of registration of marriages giving the names and the ages of the marrying parties to a prescribed authority so that we might know when the marriage law is being broken?

A. Yes; unless it is done I do not think that the law will be effective.

Q. Who should maintain these registers?

A. A combination of certain organisations mixed up together, say, some from municipal boards, some from district boards, and some from some respectable bodies.

Q. Would you like to have registrars for this purpose?

A. That would be expensive.

Q. Would you like to have municipal and district board agencies?

A. Unless they are properly organised it is no good.

Q. What then is your recommendation?

A. My recommendation is that a separate registration marriage board should be appointed, and it should be under a judge or Magistrate.

Q. In Bihar non-officials have been appointed Registrars and a fee of one rupee is levied. Do you think that is right?

A. These non-officials will be helpful, but there should be some respectable supervising authority.

Q. Would you like the marital cases to be made compoundable with the permission of the court?

A. Yes.

Q. At present cases under 12 go to a Sessions Court and above 12 they go to a Magistrate. Would you like that these cases should go to a matrimonial court consisting of a Magistrate and two non-officials to be associated with him?

A. That will depend upon where the court will be situated?

Q. There will be a matrimonial court in each district and it will sit if there is a case.

A. If it is a special court I will have no objection.

Q. Do you not think it will inspire greater public confidence?

A. Yes; it would.

Q. Do you think that proper and suitable men will be available to act as co-judges?

A. Yes.

Written Statement of Professor RADHA PRASAD SHASTRI, Oriental College, Benares Hindu University, Benares.

According to ancient holy scriptures (Vedas and Upanishads) the Dharm-shastr and Ayurveda the period of cohabitation commences only after the completion of the age 16 and not before that.

जनषोडशवर्षायामप्राप्तः पञ्चविंशतिम् ।

यद्याधत्ते पुमान् गर्भं कुक्षितः स विपद्यते ॥ १ ॥

जातो वा न चिरञ्जीविद् जीवेद्वा दुर्वलेन्द्रियः ।

तस्मादत्यन्तशालायां गर्भाधानं न कारयेत् ॥ २ ॥

सुश्रुत शरीरस्थान अध्याय १० ।

The above lines mean that if a man of any age less than that of 25 years copulates with a girl below 16 years the child shall either die in the womb or after being born breathe his last before long or even if he lives shall live with his organs quite weak and emaciated. So a man should avoid raising of children in a girl of tender age.

ऋतुत्रयमुपास्त्रेव कन्या कुर्यात् स्वयम्बरम् ॥ विष्णुस्मृति

A girl should wait for the period of 3 menses.

त्रोणि वर्षाण्यृतुमती काञ्चित् पितृशामनम् ।

ततश्चतुर्थं वर्षं तु विन्देत सद्यः पतिम् ॥ वीधायन स्मृति

A girl even after her puberty should await her father's command for 3 years. Thereafter she can choose for herself a husband to her liking.

त्रोणि वर्षाण्यदीक्षित कुमार्त्यृतुमती सती ॥ मनुस्मृति

This also conveys the idea mentioned above.

काममामरणात् तिष्ठेद् गृहे कन्यर्तुमत्यपि ।

नचैवैनां प्रपद्येत्तु गुणहीनाय कर्हिचित् ॥ १ ॥

It is better for a father to permit his daughter to remain in his own house even till her death rather than to give her away to an unmerited husband. She should not choose her husband for 3 years after her puberty. She should select one for herself only after she becomes of 16 years.

N.B.—From the above lines it is clear that even after her marriage a husband has to wait 3 years in order that her menses may be fully ripened. It is better therefore to enjoin upon a girl to wait for her own selection of her husband till the said 3 years have elapsed. The reasonable rule of law is corroborated by Vedic injunction saying that a husband should wait till her monthly-course becomes mature.

उपोषमे परामृशमामेदभ्राणि मन्यथा ।

द्वर्वाहमस्मि रोमशा गन्धारीणामिवाविका ॥

ऋग्वेद. अष्ट. २ सू० १२७ अ० ११ मं० ८.

When Bhayabya asked by his wife the daughter of Birahspati to cohabit with her he gave a flat refusal in the way mentioned in the stanza, considering her to be a quite premature age.

N.B.—From the above lines it is evident that a girl has to complete a particular age when all the signs of womanhood as given above become apparent over her body. A man must respond to the calls of the religious duties for deserving to be called a man in its proper sense as follows:—

धर्मो हि तेषामधिको विशेषो

धर्मेण हीनाः पशुभिः समानाः ॥

A little consideration will make it clear that a man who has an instinct for obeying the holy scriptures can alone have regard for the injunctions of the Vedas. For him only the necessity of the Vedas is unimpeachable. It is only with reference to the girls who have become full grown sixteen years of age or are yet less than the Paraskar Grihyasutra, 8th Kandika, 21st Sutra, lays down:—

चिराच्चमच्चारलवणाग्निनो स्यातामध.ग्रयोयातां

संवत्सरं न मिथुनमुपेयानां द्वादशरात्रं षड्रात्रं चिराच्चमन्ततः ।

पारश्वकर गृह्यसूत्र ८ कण्डिका २१ सूत्र

A husband and wife should not use salt for three nights, should sleep on earth and abstain from association for full one year or 12 nights, 6 nights or lastly at least 3 nights as the case may be. If she has been gifted away by father she should wait for a year, 12 days, 6 days for completing the age of 16 years. Even if she is full sixteen years she must wait at least for 3 days.

Thus after examining the Shastric injunction we find that the real age for cohabitation is after the attainment of 16th year. Therefore the rule of law should prescribe 16th year as the Age of Consent and not below that. Even an unmarried Swayambara (who selects her own husband) is permitted to choose her husband only when she is 16 years. There is no Age of Consent prescribed in our Shastras for cohabitation with a person other than her own husband so 14 years as the maximum age for consent is quite untenable and consequently the age mentioned in sections 325 and 326 of the Indian Penal Code is quite unsatisfactory. A man is punishable in all cases of his unjustifiable copulation with women other than his own wife. He is liable to be subjected to sufferings and repentance, the amount and nature of which is amply vindicated in the Shastras, which if needed can be given later on. But instead of inviting punishment upon the husband he can be better instructed against his temptations and passions and be made prepared to wait till her monthly-course is full-ripened. It is for this reason that after marriage the odd number of years like the first, the third and the fifth are prescribed for Gauna. During the interval her menses will be properly developed. There are two advantages of delaying the Gauna ceremony till the expiry of 1, 3, or 5 years as mentioned above after marriage—firstly the same as we have explained above and in the second place:—

ऋतुज्ञातां तु यो भार्यां सन्निधौ नोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नात्र संशयः ॥ १ ॥

The above law will protect a man from incurring the sin described in the above stanza which means that if a man does not see his wife after she has taken her bath he shall be caste into the sin of Bhrūna-hatya, there is no doubt as to this. The sentence शक्तस्वेनोप गच्छति it also indicative of the same reconciliation of the Shastric aphorisms as suggested above. The above

reconciliating line means that being capable, if he does not see, he is liable for the sin. So that a husband who does not see his wife after her ablution or purifying bath will not be charged with the sin if he is incapacitated from doing so by the non-performance of the Gauna ceremony.

Last but not the least which is important to note here that the difference between the marriage Garbhadan ceremonies in point of the time of their performance makes it palpable that a husband should wait for some time for the consummation of his marriage.

2. At the first glance it would appear proper to keep the law as to the Age of Consent the same as it is, for the non-fulfilment of the desires of a girl will result into corruption and generate diseases. But it is not what our Shastras would and do dictate. For the full play of our passions and impulses is chequered by the Shastras to procure to us healthy and happy children and an abiding spiritual benefit in the next world and a happy life here also. So an advance in the present law on the Age of Consent is the only thing which we can recommend. We would, therefore, prefer the age of 16 as the proper age of consent (and that too for the husband only).

5. There is no difference in the age of puberty on account of the difference of caste, community or society. But the changes in diet, climate, and other similar circumstances are responsible for the early or later appearance of puberty.

7. In hot climates the puberty is visible in a very early period of age such as 11 or 12 years. But in cold countries the period is delayed till a longer time. In India the usual period for puberty is between 12 and 15 years of age. After the marriage ceremony and before the commencement of puberty cohabitation is never permitted. But after menses an intercourse is permissible.

ता स्रज्वत् वरं हृणोमहा ऋत्विगप्रजां विन्दामहे कामगविजानतोः
संभवमेति तस्माद्वात्विगात् स्त्रियः प्रजां विन्दन्ते काममाविजो तोः सञ्च-
वन्ति वरं हृतं क्षामामिति ॥

Some women asked for a boon from Indra, namely, that they should live till pregnancy with their husband and produce children after puberty. This was granted to them by Lord Indra and, therefore the women after menses only can produce children. The word clearly and particularly indicates that at his wife's request the husband should see her during the period of and even after menses.

The husband should approach his wife if she expresses her desire, even after the period of menses. He should abstain any other woman than his own wife and thus protect her from mental worries. Thus it is proved that the Shastras allow cohabitation even after 16 days from the last commencement of her monthly-course, which is deemed as the period of menses to the actual advent of the future monthly-course. But it is nowhere found in our Shastras to copulate with one's wife before the appearance of puberty for the first time. The infringement of this rule involves repentance or Prayashchitta.

This enjoinder is treated as Niyumbidhi, that is to say, the offence under it can be purged off by Prayashchitt or repentance but in no case it can be substituted by any punishment from the sovereign.

8. The ceremony of Gauna always is anterior to the consummation of marriage but never coincides with it. It is performed generally after the attainment of puberty but to ascertain as to "how soon after it" depends upon the marriage at somewhat early or later period of age.

9. In answer to the first question the age of 16 which has been established as the proper time for the consummation of marriage, embraces no possibility of any harm. The attainment of puberty alone is not a sufficient proof of physical maturity. If the latter is regarded as attendant upon puberty, it

will clearly become inconsistent with the said stanzas or lines of Sushrut, which run as जातोवा न चिरस्त्रीवेत् etc. One can also clearly notice that the maturity of menses is achieved not before 16 years, i.e., on the expiry of three years after the puberty, which generally borders on the age of 12 or 13 years, and the production of issues at such a stage ensures their good physique without any actual injury to the health of their parents. Then the justifiable age for consummation commences only when three years have glided away after the first appearance of the pollen of flowers.

10. A girl becomes competent to give an intelligent consent to cohabitation with a clear foresight and a deep observation of the consequences, following it, only after she is full 16 years when, she had received sufficient education and cultivated a developed propriety and decorum of sense and experience so as not to be tempted by misleading elements without reason and rhyme.

12. Yes. They are responsible for high maternal and infantile mortality and stand in the way of the intellectual or physical progress of the people, because there is not the least doubt that the association of incompetent and premature couple will lead into such disastrous results.

14. On account of lack of education among the women of the country and their natural cravings for issues in the earliest possible time they do really favour early consummation of marriage.

16. The Age of Consent established by our Shastras is the 16th year and any deduction from it will lack corroboration but the enhancement in the Age of Consent from 13 years to 16 years will minimise the difficulty or margin of error proceeding from the actual proof of the attainment of the age of consent, because in that case the appearance of the signs of womanhood which will in itself be a sufficient proof, will dispense with the necessity of any other proof, as laid down in our Shastras.

17. Extra-marital and marital offences should be placed upon entirely different footing because in the case of the former there is the greatest likelihood of additional disastrous and rough use, which may give rise to special injuries to the woman so it is necessary to maintain a difference between the offences, similar in appearance but different in result. If a husband, although entitled to cohabitation, indulges against his wife's wishes, he should be punished with the common expression of unbounded contempt for him, etc. But extra-marital offences should always throw highest punishments upon the wrong doer such as transportation and sound beating together with fines.

धिरदण्डस्त्वत्र वाग्दण्डो धनदण्डो व्ययस्तथा ।

योज्या व्यस्ताः समस्ता वा ह्यपराधनशादिमे ॥

भ्रातृपराधं देशं च कालं वल्लभयापि वा ।

वयः कर्म च विन्नं च दण्डं दराद्येषु यातयेत् ॥

In slight offences contempt and ridicule should be shown towards the guilty. But the greater the offences the higher should be the punishment gradually and proportionately such as scolding and rebukes fines and sound beating, culminating in capital punishment. If a joinder of offences happens the punishment should also be various. In estimating punishment one must take into consideration the country, time, capacity, age, deeds and pecuniary circumstances. Our Shastras recognise differences in punishment according to those of motive, caste and age, which, if required, will be further elucidated.

20. In India the marriage of girls is considered as sacrament in lieu of that of Yagnopavit as shown by:—

पतिमेवा गुदीवासो गृह्णाद्योऽग्निपरिक्रया ॥

So just as the Yagnapabhi sacrament can be celebrated in early period of age similarly the marriage ceremony of girls also can take place in early times. This age has been clearly explained in the chapter known as "Ryabastha-bhag" of my work *Vevaha dharma marmu samalochana*. But the modern tendency of our society is not to marry girls before 12, with a view to minimise the number of widows in our country. Because this will totally prevent girls from being widows below twelve, whatever may be their lot later on. What the above lines come to is that although the early marriage of girls is not discountenanced by our Shastras, yet when the society is not in favour of such marriages, there is a great possibility of the accrual of rape cases. This brings home the necessity of penal legislation fixing a higher Age of Consent for marital cases. But the punishment in extra-marital should be very severe and rigid, whereas in marital cases, very slight and that also in order to improve the conditions of the society. Even if early marriages are granted, it is not possible that the rape cases will be totally abolished. So in all cases it is impossible to dispense with the necessity of penal legislation. Therefore, what is required is that the Age of Consent in marital cases only, should be raised up to the 16th year in consonance with the rules of our Shastras and as there is no recognition of the Age of Consent for extra-marital cases, it should be wholly overruled and discarded.

21. The fear of punishment cannot for ever extinguish or weed out evil desires and passions in the heart of a man, but can only eclipse his impulses for some time. They shall lie dormant like seeds in the heart and can grow into trees if favourable circumstances happens to come into existence or stimulating forces come into play. But instructions and education can totally eradicate them and drive away human mind from pursuing them once for all. So we can never safely rely on the strengthening of the penal law only to achieve the object in view, but must seek the aid of social reform by means of education and social propaganda.

Oral Evidence of Professor RADHA PRASAD SHASTRI, Professor, Oriental College, Hindu University, Benares.

(Benares, 11th January 1929.)

(Vernacular.)

Chairman: You are a Professor of Dharma Shastra in the Hindu University, Benares?

A. Yes.

Q. What community you belong to?

A. I am a Sanyupari Brahman.

Q. You think that according to the Ayurveda, Shruti and Smriti, Garbhudan should take place at 16?

A. Yes. It is given in Griha Sutra, 8 Kandiku, 21 Sutra. My interpretation of these is that consummation should take place after 16.

Q. What is the Vedic injunction you refer to?

A. The Vedic injunction I refer to is Rig Veda, Ashtak 2, Sutra 127, Anuvak 11, Mandal 9.

Q. Is your opinion that the Age of Consent should be raised to 16?

A. Yes.

Q. Do you think that the age for marriage should also be fixed by law?

A. Yes. In my opinion it should be from 12 to 15 for contracting marriages according to the necessity of the times.

Q. If the age is fixed by law you will have no objection?

A. No. In Manu it is laid down that a girl on attaining the age of 16 becomes a woman. I recommend that if marriage takes place before 12 it should not be treated as invalid because the Shastras permit it but consummation should be made penal if it is attempted before the completion of 16 years.

Mr. Kanhaiya Lal: Consummation before 16 should be prevented by law?

A. It may be prevented either by law or by social propaganda. Yagnalkya lays down in Book 2, verses 186-187, that whatever practice prevails if it is inconsistent with the Dharma should be observed and carefully enforced and any Dharma laid down by the King should similarly be observed. Whoever infringes the Dharma laid down by the King for the time being should be expelled from the kingdom. In Manu Smriti punishment is also laid down for a man going to another woman who is not his wife. The reference is to Manu, Chapter VIII, Verses 352 and 353.

Q. Can you quote any references that consummation should or should not take place before puberty?

A. Manu Smriti, Adhya VIII, Verses 364, 365, 366 and 367.

Q. Can you tell us whether consummation before puberty is permitted or interdicted by Shastras?

A. A rule is laid down that a man should approach his wife during menses.

Q. Is there anything showing that consummation before puberty should not take place?

A. It is laid down that a man should not go to his wife before puberty, if he does he falls down (degraded). By wasting the semen he gets the sin of killing of a Brahman.

Q. Is it true that a man incurs sin and falls into hell by marrying his daughter after puberty?

A. If the man is busy in looking for a husband for his daughter but is unable to find a suitable husband for 3 years after puberty he does not fall into hell nor does he commit any sin but if by negligence he allows the puberty to be overstayed then he is at fault. The time principally recommended for marriage is before puberty but marriage after puberty is permitted by way of exception.

Q. Is the rule requiring marriage before puberty mandatory or recommendatory?

A. It is a *Niyam* (recommendatory).

Q. Is there any Prayaschitta laid down for violating this rule?

A. A man can postpone celebration of marriage for 3 years after puberty and if the girl attains puberty there is a Prayaschitta laid down and by taking that Prayaschitta the sin is removed. Bodhaiyan also lays down that no Prayaschitta is necessary if the father of the girl is vigilant in looking about for a bridegroom for 3 years.

Mr. Bhargava: You have given a Katha of Brihaspati. Where is this Katha referred to?

A. I have taken it from the Rig Veda.

Q. Supposing marriage takes place in the 15th year, do you think they should wait until the girl is 16 years old?

A. Yes.

Q. It is laid down that Chaturthi used to take place on the 4th day. Does that not mean that in the Vedic times marriages used to take place when the girl was 16 years of age?

A. That was in the case of Swayamvara. I cannot say when marriages used to take place.

Q. According to Rig Veda, Chapter 7, Mandal 10, Sutra 85, a girl must have grace, melody of voice and strength before she can be considered to be capable of being mated or married. Do you agree?

A. This text if applied without reference to the Smritis may indicate that unless the girl attains all these 3 qualities completely she may not be married but taken along with Smritis it may indicate that at the beginning of these or while these qualities are in course of being attained in perfection a girl may be married. It is at 16 that all these qualities are attained in perfection.

Q. And even without reference to Smritis, your opinion is, that girls may be married at 16?

A. Yes.

Q. You have said about the sin of *Bhrunhatya*. It means that if a man goes to his wife during menses and if conception takes place he commits only one *Bhrunhatya*, but if a man does not go to his wife for 10 months, he commits the sin of 10 *Bhrunhatya*. Is it only to frighten people?

A. I cannot say.

Q. In reply to question No. 4 the story that you have given is in reference to age?

A. It is with reference to menses.

Q. If early marriage is practised for a very long time does it induce to early puberty?

A. Yes.

Q. Is it laid down in the Shastras when marriages used to take place in olden times?

A. I cannot say.

Q. What is Gaona?

A. Gaona means that early consummation should not take place.

Q. Is there any reference about it in the Shastras?

A. Gaona ceremony has come into vogue during the last one thousand years. In the old Shastras there is no mention about it but in the new *Jyotish granthas* there are rules given in regard to it. I think the age of consummation should be fixed at 16. A girl is called *Pushpavati* when she gets menstruation and from the analogy of flowers I come to the conclusion that it is not at the first menstruation that impregnation should take place. There must be sometime say 3 years that should elapse between menstruation and impregnation.

Q. You have said that in the case of rape in extra-marital cases the punishment should be that the man should be put to death?

A. A man should be turned out of the kingdom if he disobeys the law of the King.

Q. You suggest that the marriage age should be fixed at 15.

A. It should be between 12 and 15.

Q. If 15 is fixed as the age of marriage, will it have the effect of decreasing the number of widows?

A. Yes.

Q. Is it laid down in any of the Shastras that virgin-widows before 12 may be re-married?

A. There are 7 kinds of widows. According to Atharva Veda re-marriage of virgin widows is permitted.

Q. In your opinion if a man goes to his wife before she attains the age of 16, he commits a sin?

A. Yes.

Mian Mohd. Shah Nawaz: You have said in your statement that if a husband cohabits with his wife against her will he should be treated with contempt. Is there anything in the Shastras about it?

A. There is nothing in the Shastras. That is my own opinion because the authority is that only at the desire of woman a man should have connection with her.

Mr. Mitra: Do you want a law fixing the minimum age of marriage?

A. Yes, but marriages at 8 and 9 should not be made illegal.

Q. But punishment will be given for the breach of the law?

A. Yes, punishment may be given.

Q. What is the age that you would fix?

A. Between 12 and 15.

Q. Don't you feel that would be against Shastras?

A. That would be in accordance with Shastras.

Q. You are of opinion that Vedas support late marriages?

A. Yes.

Mrs. Nehrū: Do you want any age to be fixed for consent?

A. It should be 16.

Q. And the man should be punished if there is cohabitation below that age?

A. Yes.

Q. What should be the punishment?

A. I am for a fine in marital cases.

Q. In answer to question No. 20 you say, "yet when the society is not in favour of such marriages, there is a great possibility of the accrual of rape cases". How do you think the enactment of the law would lead to the accrual of rape cases?

A. I believe if marriages are postponed beyond 16 there is a chance of girls going wrong and rape cases taking place.

Mrs. Beadon: Do you know any cases in which injury might have taken place as a result of early consummation?

A. I know of many instances. I know of a case of a Kshatriya girl who got a child at 13. For the last 6 or 7 months she has been ill and it is not known whether she will survive.

Q. What about the child?

A. I do not know whether the child is alive.

Q. How long ago was that?

A. About a year back.

Q. Do you know any other case?

A. I can't mention any specific cases. I have seen two girls suffering.

Q. What about the children of these young mothers?

A. They are weaklings and very small in weight.

Oral Evidence of Mahamahopadhyaya Pandit PRAMOTH NATH TARKA BHUSHAN, Principal, Oriental College, Benares Hindu University.

(Benares, 11th January 1929.)

(Vernacular.)

Chairman: Are you the Principal of the Oriental College?

A. Yes.

Q. Did you preside over the Hindu Conference?

A. Yes, that was in April 1928.

Q. Is your speciality Dharm Shastra or Nyaya Shastra?

A. Dharma Shastra.

Q. What do you think can be inferred from the Vedas—was there early marriage during the Vedic period?

A. Early marriage during the Vedic period was unknown but in the Smriti period early marriage is often found in our Shastras.

Q. Is there any injunction or deduction of the Vedas from which it can be inferred that soon after attaining puberty a girl should be married?

A. In the Sutra period I find that marriages were celebrated after puberty but in the Puranas and Smritis there are certain texts which show early marriage.

Q. Can you give us any text from the Sutras laying down marriage of mature girls?

A. There is ample authority in the Sutra period that marriages used to take place when the girls were fully developed, because Goghil says that after marriage the husband and wife should sleep for three nights in Brahmacharya. After that they are permitted to cohabit. I can produce this kind of injunction from the Dharma Shastra.

Mr. Kanhaiya Lal: It may be 3 nights, 12 nights or one year.

A. I think that is *Deshachar* (custom).

Q. According to you in those days a girl must have attained puberty before she was married and hence the necessity of keeping Brahmacharya?

A. Yes, otherwise it is useless.

Q. Do you think the text about pre-puberty marriage is mandatory or recommendatory?

A. There are certain texts which do enjoin early marriages. In the Smritis there are texts which show that if a girl attains puberty before marriage the father of the girl is supposed to drink her blood and he will go to hell.

Q. With regard to that are you aware that there is a Prayaschitta laid down for a girl attaining puberty before marriage so that the sin can be expiated and removed?

A. Yes. There are many verses. (The witness promised to send the authorities.)

Q. By taking the Prayaschitta is the sin removed?

A. Yes.

Q. There are certain texts which require the man to go to his wife after menses. Do you think they are recommendatory or mandatory?

A. I cannot say now; I will have to see *vinah vilhi*.

Q. It is said that the object of marriage is to have offspring and the offspring should be strong, pious and energetic.

A. In Ayurveda there are many injunctions that on the completion of 16 years a girl should be married and if cohabitation takes place before 16 the offspring will be weak. In Jotishtava Niband by Bhujobalbhini, an old text-writer, recommends that the age for marriage should be 20 and 16 for boys and girls. In the commentary of Parasara Madhava Bodhayam says that after puberty if a man does not go to his wife for 3 years he commits the crime of killing the fetus. It means that for 3 years after puberty he can wait. In Vishnu Puran the word *Parishat* is used which has a reference to Ayurveda text which means when a girl is fully developed, i.e., 16, considering all these texts I am of opinion that even when early marriages were taking place consummation must have taken place after 16 in consonance with the directions of Ayurveda.

Q. Do you think that those girls who become mothers before 13 or 14 complete suffer?

A. Girls becoming mothers at 14 or 15 are common but mothers at 13 are rare. I think poverty is one of the causes of deterioration of girls after delivery but there are exceptions in certain cases.

Mrs. Nehru: Were you present at the conference of Brahmins where the age of marriage for girls was fixed at 12?

A. No. We do not agree with that.

Q. Did you have any Shashrith?

A. I was prepared but they did not come.

Q. According to you during the Vedic period marriages took place at a later age but during the Smriti period marriages were earlier. Can you say why it was so?

A. On account of the decline of Vedic education early marriages began to take place. It was from the time when foreigners (Greeks) came into India that marriages began to take place early.

Q. From what exact time early marriages came into vogue?

A. I think it was from the time Alexander the Great came into India.

Q. You call that Puranic period?

A. Smriti period.

Q. Can you tell me whether there is any difference in age for the marriage of Brahmins and non-Brahmins?

A. In regard to marriage there is no difference. Among Brahmins the girls are married at 3 or 4. There is no specific injunction that Brahmins should marry before puberty and others should marry after puberty.

Q. Some Pandits have said that marriage is for the girl what the ceremony of Yagopavit is for the boys, and they say at the age at which boys are given Yagopavit girls should be married?

A. It is not laid down in the Shastras but it is their personal opinion.

Q. Can you give us any examples in olden times of Brahmin girls having married after puberty?

A. Devayani, Savitri.

Q. Pandits say that these were exceptions?

A. At the same time there is no proof that there were pre-puberty marriages.

Mr. Mitra: Cannot you tell us from your study of the Shastras that customs develop or change according to time and circumstances?

A. Yes, it happens. There are many instances. It can be proved from Dharma Shastra that according to change of times and social conditions and other causes the Dharma was changed, Achar was changed and if circumstances so arise it may be changed.

Q. Will you kindly give reference to some of these text-writers?

A. Dharma Shastra, Nibandkary and Raghunandan Bhattacharya. In the Adi Puran it is laid down that for the protection of people these religious duties were changed by people who were not *Rishis* but Mahatmas and Sadhus. The *Uyavasthas* brought about by Sadhus may be regarded as *Sruti* or *Veda*. These are the Dharmas which have been made and brought into force. We can therefore say that according to the present changed conditions the Dharma may be changed.

Q. So you think it will not be against tradition or against the Shastras if for the best interests of the country some of these rules are now changed.

A. No.

Mr. Bhargava: You have said that during the Vedic period there were post-puberty marriages. Your inference is that marriages used to take place after 16?

A. Marriages used to take place at 15, 16 or 18.

Q. In Ayurveda it is said that if consummation takes place when the girl is not fully developed the offspring will be very weak. Does it not therefore follow that marriages used to take place at a time when they did not transgress the Shastric injunctions?

A. Yes.

Q. Therefore marriages used to take place at 16?

A. My opinion is they used to take place at 15 or 16.

Q. Is Ayurved considered a part of the Vedas?

A. Yes. It is laid down in the Dharma Shastra that if any other Shastra goes against the Dharma Shastra, Dharma Shastra should be observed in preference to that.

Q. When were Sita and Drowpadi married?

A. In Ramayana there are two or three opinions but it is not clear.

Q. When was Drowpadi married?

A. As she selected her own husband it is clear that she must have married when she was fully developed.

Note.—Pandit Durga Dutt Shastri, Principal, Sanskrit College, Muzaffarpore, was invited to give evidence both at Patna and Benares, but did not come.

Oral Evidence of five Kunbis, RAMSARAN, son of Jakri of Hartharpur, District Benares, SOMER, son of Ramdat of Pandepur, RAM NIWAS, son of Shiv Dayal of Basinh, TULSI RAM, son of Shiv Niwas and HAR NANDAN, son of Shiv Dayal.

(Benares, 11th January 1929.)

(Vernacular.)

Chairman : What is the usual age of marriage amongst you?

A. Marriages take place at 3 or 4. Four is the utmost that they go to.

Q. Will you not find any unmarried girl of 10 years?

A. No.

Q. When is the girl sent to the husband's house?

A. After 12.

Q. Do you send the girl to the husband's house after she has attained puberty?

A. In some cases they are sent before puberty and in other cases they are sent after puberty. In most cases it is before puberty.

Q. Consummation takes place before 13?

A. Yes.

Q. Do many such cases occur?

A. Yes, many.

Q. When do the girls attain puberty generally?

A. At about 11 or 12.

Q. Child-birth takes place before 15 or 16?

A. Yes.

Q. Do you find any evil consequences, any injury as a result of early consummation?

A. Many girls become very weak. The children are very bad and are unfit to do any sort of agricultural work. They cannot be strong and healthy.

Q. Do you feel that early maternity and early marriages badly affect the mothers and children?

A. Certainly, they are very badly affected. They are very poor in health.

Q. Would you like to have a law fixing the minimum age of marriage?

A. We have had many caste meetings, but without legislation there is no remedy. We have tried our best that marriages should not take place before 10, but nobody agrees to it.

Q. Therefore would you like to have a law fixing the minimum age of marriage?

A. That will be very good.

Q. There will be punishment if the law is broken. Do you know that?

A. There must be punishment.

Q. Have you carried on any propaganda in the caste panchayat in favour of raising the age of marriage?

A. Yes. I have got a daughter who is now 5. I cannot get a husband for her.

Q. What is the reason?

A. Because she is considered to be too much grown up. The people are not agreeable to raise the age to 7 for girls and 10 for boys.

Q. What is the difference between the age of the boy and the girl generally?

A. In some cases the difference between the age of the girl and the boy is very small. When a girl becomes of a bigger age they do not get husbands of their age and they go away and we have that evil also amongst us.

Q. Is there no custom of widow marriage among you?

A. Even when the husbands are alive the girls are married again and several cases have come to court on account of this.

Q. Is there a custom of dowry among you?

A. The father of the girl pays money, but there is no compulsion. There is a sort of rule. Rs. 100 is the maximum.

Q. How is it that marriages take place so soon?

A. In the time of Mohaunadan rulers whenever there was a beautiful girl she was taken away by the loafers and as a result the girls began to be married very young.

Q. Would the women like a law?

A. All want a law. All want that marriages should take place at a later age but nobody does it.

Q. What age should be fixed for girls?

A. The first two witnesses reply that they would have 10 or 11 and the next three witnesses agree to 13 years.

Q. And then should Gaona take place at the same time?

A. Yes.

Q. If the law for Brahmins and Kshatriyas is 14 would you agree to it?

A. We are afraid that if the age is raised to 14 our girls may go wrong. They have to work in the open fields.

Q. What age would you fix for extra-marital cases? Do you desire that if girls of 16 or even 18 are taken away by anyone who is not the husband of that girl the man should be punished even if the girl has consented?

A. Yes, the man should be punished.

Mr. Shah Nawaz : Do you think that a girl of 13 will go wrong?

A. No.

Q. Will a girl of 14 go wrong?

A. No. The marriage age may be fixed at 13.

Q. At what age should Gaona take place?

A. Fourteen.

Written Statement, dated the 8th August 1928, of the Hon'ble Raja MOTICHAND, C.I.E., of Benares, Member, Council of State.

1. Yes. I am inclined to think that it is being seriously realized that the present age of consent is a positive evil for the progress of society.

2. (1) None.

(2) Advance is necessary in view of the social reform for which the country is crying and also for which it is ripe. The age of consent as permitted by the existing law is certainly detrimental to the full growth and development of a girl to womanhood.

3. I think so. I think not. Any measure that would prove effective would be to still raise the age of consent to 16 years.

4. No. (2) and (3) could be relied upon to ameliorate the evil and also to make the law effective.

5. Generally between 13 and 15. Yes, as it depends largely on diet and association.

6. Yes.

(1) Among low class people who have no separate dwellings or even separate beddings.

(2) Among Brahmins, Kshattriyas and Vaishas.

(3) Amongst any class without education.

I am not aware of this.

7. Certainly not. If there were one that countenanced the perpetration of cruelty on girls in such a merciless manner I would not personally abide by it.

8. Yes. Not necessarily. It mainly depends upon the wishes of the parents of the girl wife and the boy husband.

9. No. I should think that 18 would be the most justifiable age limit.

10. Between 16 and 18, 16 for husband and 18 for outsider.

11. Many.

12. Yes. And the evil has assumed such alarming proportions that even if the mothers and children of such mothers live at all their life is always miserable and wholly devoid of physical or intellectual progress.

13. Yes, but it is at present confined to higher and educated classes.

14. Unfortunately they do.

15. Such difficulties are always present, I would recommend the formation of a board of experts and non-experts for each locality that would help the court who generally, and in many cases reluctantly have to rely upon medical evidence alone.

16. Surely if it is raised to 16.

20. No, as cases do not usually come before the Court. Raising the age limit would be very effective.

21. Progress of social reform should always be relied upon but it is necessarily of very slow growth, owing to the prevalence of illiteracy, among the masses to a very shocking degree, combined with other economic causes it would in the interest of society to still more strengthen the penal law.

Oral Evidence of the Hon'ble Raja MOTICHAND, C.I.E., Member, Council of State.

(Benares, 11th January 1929.)

Chairman : Are you a member of the Council of State?

A. Yes.

Q. How long have you been a Member?

A. From its very existence.

Q. Between the law of age of consent and a law fixing the minimum age of marriage which would you prefer. Which of these do you think would be more effective?

A. I would prefer law fixing the minimum age of marriage, I think that would be more effective.

Q. What age would you recommend for marriage?

A. Fourteen for girls and 18 for boys.

Q. Supposing there is a law of age of consent only what age would you recommend?

A. Sixteen.

Q. What would you recommend for law of consent in extra-marital cases?

A. Eighteen.

Q. Do you think that the evil of early marriage and early maternity in this part of the country is so widespread that it would be justifiable for the Government to undertake legislation?

A. Certainly.

Q. Do you think the people will generally accept the law of marriage?

A. Opinions vary.

Q. What classes would be affected thereby? What percentage they would be of the entire population?

A. I think 50 per cent.

Q. Is child marriage found in some communities or is it general in all communities?

A. It is in all communities.

Q. Do you know anything about Ahirs in this part of the country?

A. Yes.

Q. We are told that they have their Gaonas after 16 or 17?

A. That is true.

Q. Have you had any chance of comparing their children with the children of those who go in for early marriage and early consummation?

A. The children of Ahirs are stronger than others and also mothers are well off.

Q. Would you put that to late marriage or late maternity or would you rather put it to there being more well fed?

A. I think it is due to late maternity. Ahirs are very poor people.

Q. And in spite of that are they physically well developed?

A. Yes.

Q. Is it a fact that among the Karans the marriage age is advancing?

A. Yes.

Q. Among those who have late marriage are you prepared to suggest that their progeny is good and there is less trouble to the mother?

A. Yes.

Q. Can you suggest any method by which we could allow these people to have their marriages in their own way at any age but at the same time we may stop effectually early maternity below 16—the age laid down by Susrhut and other people?

A. I think a law of marriage is the only remedy.

Q. There is no way of reconciling the two views?

A. No.

Q. Supposing there is no marriage law and we simply raise the age of consent to 16 as suggested by you, do you think it will be effective?

A. No. If the marriage is celebrated early it is very difficult to stop early maternity.

Q. Supposing there is no marriage law but there is the age of consent law, are there any means by which cases may be brought to light more than they are at present?

A. I cannot suggest anything.

Mrs. Beadon : Why are the Ahirs married late—is there any reason?

A. It is mere custom.

Q. You say in answer to question No. 11 that you know of many cases in which early consummation has been deleterious. Would you mind giving us one or two instances which may have come within your personal observation?

A. A girl of 13 years died soon after delivery. That was last year.

Q. Was she a poor girl or was she well-to-do?

A. She belonged to a well-to-do family.

Q. Any other cases?

A. There are several cases like that.

Q. Do these cases occur now?

A. Yes.

Q. What about the children of young mothers?

A. They are very weak.

Q. What do you think is the ladies' opinion about marriage?

A. I think ladies want late marriages.

Q. Do you think orthodox ladies desire early marriages or late marriages?

A. They want late marriages.

Q. Have there been any meetings on this point?

A. No.

Mr. Mitra : You say that about 50 per cent. of marriages take place before puberty. Can you tell us what is the percentage of cases in which there are pre-puberty consummations?

A. I think it is 25 per cent. to 30 per cent.

Q. You know that the orthodox people will not accept any marriage law. Can you tell us what shape their opposition will take?

A. They will only hold protest meetings.

Q. As a Member of the Council of State can you tell us whether there are chances of marriage law being passed by the Council of State?

A. I think so.

Q. What punishment would you suggest for cases of infringement of marriage law if passed?

A. In the beginning I think only fine should be imposed and after some years if experience shows that it is not sufficient, imprisonment may be prescribed.

Q. We have been told by some witnesses that in Baroda where there is a marriage law, a fine imposed is considered as an item in marriage expenses.

A. In the beginning there should be fine only but imprisonment may be prescribed after some time if it is proved that it is not deterrent.

Mr. Bhargava : What is the usual age of marriage of boys and girls?

A. It is 13 years for boys and 11 years for girls.

Q. Does the ceremony of Gaona generally take place here?

A. Yes.

Q. At the time of Gaona do the parents of the girl give clothes and ornaments in much greater amount than they give at the time of marriage?

A. At the time of Gaona they give much less nearly $\frac{1}{4}$ th of what they give at the time of marriage.

Q. So far as conjugal relations are concerned is it at the Gaona that the husband and the wife see each other?

A. Yes.

Q. When does Gaona usually take place?

A. It is usually three years after marriage.

Q. Is the evil of widowers marrying young girls very common here?

A. Yes.

Q. Would you say that it is 10 per cent. of the marriages?

A. Yes.

Q. In their case early consummation generally takes place?

A. Yes.

Q. In paragraph 15 you have been pleased to suggest that there are some difficulties and you have recommended the formation of a board of experts and non-experts. Would you be satisfied if there is a sub-committee of the municipal community or the District Board which can co-opt members if it likes to?

A. Yes.

Q. Will its work generally be to publish or make known the evil effects of early marriages or to help in the administration of this law?

A. Certainly.

Written Statement, dated the 4th January 1929, of Doctor (Miss) B. THUNGAMMA, F.R.O.S.E., W.M.S., I.M.H., Benares.

1. It is generally difficult to fix the exact age of a person and when the law provides the age of 14 and the girls mature about 13 or 14, it is difficult to work the law.

2. An advance is necessary for the following reasons:—

(a) To avoid the physical deterioration of the girls and their progeny.

(b) To help female education which is seriously affected by the early marriage of girls.

(c) To give the girls the benefit of childhood and girlhood and enjoy life.

(d) To help women to be self dependent economically and to improve their social status.

(e) For the improvement of social life as legislation to raise the age of marriage will have to be undertaken and that will give a chance for the wishes and inclination of the girl to prevail in marriage.

3. The raising of the age of consent to 14 has not materially succeeded in preventing or reducing cases of rape outside the marital state, because the age fixed is too low and it is difficult as already mentioned to work the law as it is.

The raising of the age for cohabitation outside the marital state and legislation fixing an age for marriage are necessary to make the object of the law effective.

4. The amendment of 1925 has had no effect to postpone marriage beyond 13 or in stimulating public opinion in that direction, since girls attain puberty generally at about the age of 13. The consummation of marriage generally follows closely on the attainment of puberty by girls. Since the

age fixed is only 13, there are many cases coming under the law. Even in cases coming under the law, publicity or prosecution cannot be thought of, as it is not in the interests of the girl herself that the husband be prosecuted.

8. Yes. It has nothing to do with the attainment of puberty or the consummation of marriage, but after the ceremony the girl is in the house and in some families she is allowed to live with the husband.

9. It is not. About 2 years after attaining puberty will be necessary for the proper growth and development of the girl.

10. For a girl to give her intelligent consent with a due realisation of consequences she ought to be about 22.

11. In cases where cohabitation has been allowed before the girls attained puberty, there have been local injuries and these cases have been very few to come to my notice professionally. And in cases where the girls had attained puberty but before full physical development, the first conception has invariably been an abortion or miscarriage followed by a series of such accidents. Thus invalidating the girls permanently. High maternal and infantile mortality are its consequences.

12. Yes—certainly.

13. The generality of the people are now in favour of raising the age of consummation but some people of the orthodox classes are against legislation in this matter.

14. No.

15—16. It is difficult to determine whether a girl is 13 or 14. The difficulty will be removed if the age for marriage is fixed and the age for consent be raised to about 22.

17. Yes. I would continue the present for offences outside marriage and for offences within marriage a light punishment. The provision of heavy punishment for marital offences will defeat its purpose as people will hesitate to prosecute or give evidence in cases under marriage if there is heavy punishment.

18. Yes. In cases outside marriage, the present procedure may be followed and for cases under marriage complaint by a person interested in the girl or by a philanthropic association may be insisted upon.

19. The procedure proposed in 18 will provide the necessary safeguards.

20. I think the fixing of the minimum age for marriage is the only safeguard against offences under marriage. As I have said above, except a few orthodox people, the generality of the people will be in favour of fixing a minimum age for marriage.

21. While education and social propaganda are necessary for the progress of social reform, the place of penal law to secure the object in view cannot be ignored. In matters of serious import like the one under consideration the legislature has its duty and it ought not to wait until every body agrees to the legislation proposed. Nor can education and propaganda alone attain the object without legislation.

**Oral Evidence of Doctor (Miss) B. THUNGAMMA, F.R.C.S.E.,
W.M.S., I.M.H., Benares.**

(Benares, 11th January 1929.)

Mrs. Beadon : Are you in charge of the Ishwari Memorial Hospital, Benares?

A. Yes.

Q. How long have you been here?

A. I have been here for the last five years.

Q. How many beds have you got here?

A. Fifty-six.

Q. What class of patients do you get here?

A. Hindus and Muhammadans and also a few Christians.

Q. Have you a fairly large number of in-patients?

A. Yes.

Q. How many do you have in a year?

A. About 300 labour cases.

Q. What class of patients come? Are they poor or rich?

A. Not the highest.

Q. Do better classes of people come?

A. People come from the better classes but in wealth they may be poor.

Q. Don't you have the cool caste?

A. We don't have the chamars and the doms, these people go to the male hospital.

Q. In those labour cases which you have come across do you see a fairly large number of young mothers or do you see only a very small proportion of young mothers?

A. I see a very small proportion of young mothers.

Q. Is that because you don't get the first labour cases. Do they prefer to have them in their houses?

A. The first confinement cases are preferably done at home.

Q. Do they come to the hospital for subsequent confinements?

A. Yes.

Q. What is the average age of cases of the first confinement that come to the hospital?

A. About 16.

Q. Have you worked in any other places?

A. Yes, I have.

Q. Would you mind telling us in what places you have worked?

A. I have worked in Erode in the Coimbatore District for about 5½ years, in Karachi for a short while, in Rawalpindi, Surat, Nagpur and in Vizagapatam.

Q. Now in all these places, where you have worked, will you tell me what is the youngest age at which you have seen mothers?

A. About 14.

Q. You say in answer to question 11 that in cases where the girls had attained puberty but before full physical development the first conception has invariably been an abortion or miscarriage followed by a series of such accidents. At what age do such accidents happen?

A. About the 14th year.

Q. Do you think that this is so because the girls are infected with venereal diseases or is it because they are unable to get through the maternity?

A. It is not because of venereal disease.

Q. Then is it on account of their youth?

A. It is on account of their general inability to get through maternity.

Q. What age would you consider as the safe age for motherhood?

A. About 16.

Q. Have you seen mothers of 16?

A. Yes.

Q. Have you seen their children?

A. I think the children are all right.

Q. You say in your answer to question 15 that it is difficult to determine whether a girl is 13 or 14 and that the difficulty will be removed if the age for marriage is fixed and the age for consent be raised to about 22. Is not 22 very high?

A. For a girl to give her consent outside marriage with the full realization of the consequences of her act it is not until about 22 that she can realise what steps she is taking.

Q. But then if an age for marriage is to be fixed what age would you recommend for it?

A. About 16.

Q. Do you know that the present law for consummation is 13?

A. Yes.

Q. Would you like to raise this age?

A. In my opinion the age of consent in marital cases cannot be worked out satisfactorily.

Q. And so would you prefer to have a marriage age fixed and that age would be 16.

A. Yes, but as a first step 14 will do.

Q. Do you mean to say that we can have 14 for marriage as a first step and afterwards raise it to 16?

A. Yes.

Q. Do you think that people would agree to 14 or offer great opposition?

A. I don't think there will be a great deal of opposition from the general public except a very few orthodox people.

Q. But have you noticed these villagers saying that they are afraid of their girls going wrong after 13 or 14 and are you also aware of the fact that there the girls have no occupation? Do you think that in the cities it will be difficult too?

A. I don't think so.

Q. Do you suggest that puberty generally comes at about 13?

A. Yes.

Q. What the Brahmins tell us is that a girl who attains puberty is beginning to feel the sexual craving and if that desire is not satisfied at once, there is every chance of her going wrong. Is that your experience? Do you think that they will really go wrong?

A. I don't think so.

Q. But have you heard them say so?

A. Yes.

Q. Have you taken the opportunity of speaking to the women that you meet about?

A. I do speak to them.

Q. What is their opinion as regards these questions?

A. I think they would like a law.

Q. Do you think that the orthodox women would like fixing an age for marriage or would they be opposed to it?

A. I think that they would like a law.

Q. Do you think that they seem to realize the evil consequences of early motherhood?

A. Yes, the mothers do realize that. The mothers don't want to have the marriages soon. They realize the evil effects of early motherhood.

Q. Is it the mother or the social custom that stands in the way of an advancement?

A. I think it is the social custom that stands in the way.

Q. Do you think that there is really a definite religious scruple in a large number of them, which lead them to marry their girls before puberty.

A. I think it is a social scruple and not a religious scruple.

Q. Do you therefore think that if a law is fixed it would be of very great help to them?

A. Yes.

Q. Can you give us one or two instances that you know of within the last three or four years where these young mothers had any particular difficulty during maternity?

A. In one particular case the mother developed something like a very severe type of hysteria amounting to puerperal insanity?

Q. What was the age of the mother?

A. About 14.

Q. Was that during child-birth or after the child-birth or during the pregnancy?

A. It was during the child-birth.

Q. Was she a Brahmin or Kshatriya?

A. Agarwal.

Q. Did the baby survive?

A. Yes.

Q. What do you think about the infections? Do girls resist the septic infection and venereal infection or do you think that the septic infection doesn't give much trouble?

A. The girls generally get over the septic infection, but afterwards they are liable to tuberculosis.

Q. Have you seen sterility following the infection?

A. Yes.

Q. Do you not think that on account of early child-births there is much damage to the soft parts?

A. I don't think that there is any permanent defect left behind. Apart from septic infection I don't think that there is any other special damage to her.

Mrs. Nehru : Can you tell the age of the youngest mother you have come across?

A. Fourteen.

Q. Did you find a large number of young mothers in Benares or elsewhere?

A. It is the same everywhere.

Q. Can you not differentiate between the number of young mothers of one place and another where you have worked?

A. No.

Q. Do you think there is any difference in the children which are born to a mother of a young age and to the same mother at a later age?

A. I don't think there is much difference, but after about 35 or 38 the children that are born are weaker, in Indian mothers.

Q. That is another thing. I wanted to know whether you noticed any difference between the child that was born to a girl say at the age of 14 and the second child that was born to the same mother at the age of 16 or 18.

A. I don't think there is much difference.

Q. Have you noticed any difference in the age of puberty in the different castes?

A. It is different according to families and some times the better class people menstruate earlier.

Q. Do you think that the better class of people attain puberty earlier because they get good food?

A. I think so.

Q. Don't you think there is any difference in the ages of puberty amongst the villagers and the towns-people or the communities which are marrying late and the communities which are marrying early?

A. In the villages the girls menstruate later than in the cities.

Q. Is there any difference in the age of puberty between the Brahmins and Muhammadans?

A. I don't think there is any difference.

Q. When you had a talk with the ladies about the fixing of the minimum marriageable age, did you ever have occasion to talk to them what punishment they would be willing to give to those who break the law?

A. No.

Q. Did you ever take part in any of the meetings that had taken place with regard to these questions?

A. Yes.

Q. Was the question of punishment discussed in those meetings?

A. I don't think so.

Q. Do you mean to say that in those meetings only the age was fixed and nothing else?

A. Yes.

Q. Is it possible for Doctors to report cases of breaches of the age of consent law if they are asked to do so?

A. I don't think that any report would reach the Doctors.

Q. I mean when the Doctors who attend the maternity cases find that the girl is younger than the prescribed age, will it be possible for them to report such cases to the authorities?

A. I doubt whether they will report such cases because they will never be called in?

Q. If they do this work, will they lose their practice?

A. Yes.

Mr. Yakub : In reply to question No. 10 you say that for a girl to give her consent with a due realization of the consequences she ought to be about 22. Do you want this law for extra-marital cases?

A. Yes.

Q. You know that if a woman legally becomes mature at 18, she can dispose of her property and she can deal legally with all other worldly affairs. Don't you therefore think that it will be very hard to raise the age of consent in these cases even higher than 18?

A. The age of consent I think in these cases is much more important than even the disposal of one's property. It is the disposal of one's own existence and I don't think that a girl at the age of 18 is intelligent enough to realize the consequences of her act.

Q. Don't you think that from 14 to 22 is a big jump?

A. It is a big jump.

Q. Don't you think that there will be so many practical difficulties in putting this law into operation if you raise the age to 22?

A. But as this is a very serious matter, you must raise it to 22.

Q. What age would you recommend for the age of consent within marital relations?

A. Sixteen.

Q. Now the offence in both cases is the same and how is it that in one case you fix 16 and in the other case 22?

A. In the extra-marital case the woman can be easily disposed of whereas it is not so in the intra-marital case and the relations will have a strict watch on the girls.

Mr. Kanhaiya Lal : There is a complaint that these marital cases are not brought to light. Can you suggest any measures for helping the detection of these cases?

A. The difficulty begins because the prosecution involve the husband of the girl who is one of their own after all and the punishment is also heavy.

Q. Supposing the punishment is reduced, would many cases come to light?

A. Still the difficulty will continue, especially because they are prosecuting one of their own. The only solution is to fix the marriageable age and afterwards let them do whatever they like.

Q. You have suggested 14 for marriage and 16 for consummation. Supposing it is fixed at 14 for marriage, still there is a difference of two years. How would you detect cases of breaches of the law?

A. It is very difficult to detect the cases.

Q. Supposing some how or other it so happens that a marriage law is not passed, then can you suggest any measures to make the consent law effective?

A. No.

Chairman : Have you ever examined mothers at 14 or even at 15 having no injury and having their children quite all right?

A. No, I haven't examined so, but my own experience is that mothers of 14 or 15 can give birth to children but that they are devitalised to an extent that they fall a prey to diseases especially to tuberculosis even after one child.

Q. Do you know that there are so many causes which lead to the deterioration of mothers' health and that of the children?

A. Yes.

Q. How would you attribute this deterioration of health to early maternity and not to frequency of pregnancy, insanitary surroundings, want of proper care and good diet and so on?

A. The early mother is not educated enough. There comes the time for her education. She cannot take care of herself and her baby because she hasn't got the chance of education.

Q. How can you connect education with early maternity? I want to know whether early maternity is the cause or one of the prominent causes that lead to the deterioration of mothers' and childrens' health.

A. I would probably put it down as the first cause, which is a very vital factor in deteriorating the mother.

Q. Supposing a girl of 14 is well developed and gives birth to a child and doesn't have frequent child-births as also she is given all the proper care and attended to by a lady Doctor and so on, do you mean to say that she will suffer and her children will suffer?

A. I have had one case where the father was very well-to-do. The girl got very good medical attendance and she got on all right but afterwards say within a year or two she died and she was a medical man's daughter.

Q. What did she die of?

A. Tuberculosis.

Q. Did she contract it soon after delivery?

A. Yes.

Q. Have you reason to attribute this to early motherhood?

A. Yes.

Q. Do you think that girls lose a good deal of stamina on account of early motherhood?

A. Yes.

Written Statement of Pandit IQBAL NARAIN GURTU, M.L.C., Benares.

1. There is considerable dissatisfaction with the state of the present law as to the age of consent among the educated middle classes, and more particularly among the women of this class as is clear by the very strong opinions expressed by them at their various Conferences and meetings and in their magazines.

2. The huge infant mortality, the low average of life in India as compared with that of other nations, the rapid decline noticed in the physical health of each succeeding generation, the serious hindrance to the education of girls caused by early consummation of marriage, the large number of fatal maternity cases, the permanent injury to the body and health of girl-mothers, the unintelligent methods of rearing up children by child-mothers leading either to mortality or to permanent injury to the physical growth and proper mental development of the child—all these crimes against the laws of nature and against social and moral laws are crying for an urgent and early remedy by the State by means of a more sensible, progressive and courageous legislation.

3. Crimes of seduction and rape are not infrequent in this part of the country. It is yet too early to conclude whether the amendment of the law made in 1925 has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. But the figures of offences as given in Police Administration Report of United Provinces for 3 years are as follows:—

Offence.	Year.	No. reported
Rape by a person other than the husband	1925	264
	1926	248
	1927	210
Kidnapping or abduction, selling, etc., for prostitution and dealing in slaves.	1925	598
	1926	716
	1927	785

If by the amendment of the law in 1925 the age of consent were increased by several years and not by one year only the results would have been more appreciable. In order to make the law more effective the age of consent should be raised from 14 to 18.

4. The raising of the age of consent within the marital state from 12 to 13 only by the amendment of the law in 1925 has not been very effective in protecting married girls as (1) it has not, so far as I know, by itself appreciably helped in the postponement of the consummation of marriage; (2) it has undoubtedly stimulated public opinion in certain classes in that direction; (3) but outside the educated middle class it has not yet appreciably succeeded in putting off marriage beyond 13.

The law about the age of consent can in my opinion be only made effective when the age of marriage as well as of consent is raised considerably beyond 14.

5. The age at which girls attain puberty in this part of the country is usually between 11 and 13 among well-to-do classes who lead a less physically active life, and between 12 and 14 among the poorer classes who do more of physical work.

6. So far as I know cohabitation is not common in this part of the country among any class, except perhaps the Bengalis, before the girl completes 13 years. The number of cases that come into Court under section 376, Indian Penal Code. "Rape by the husband" as given in the Police Administration Reports is as follows:—

(1925),—14; (1926),—7; (1927),—27.

The actual cases of cohabitation under 13 years must undoubtedly be very much larger. I believe it is only one or two cases out of a hundred

that go to a Court of law and that too when the relations either between the husband and wife or between their parents are strained and unhappy.

7. The early consummation of marriage and, still more than that, early marriage is due to tradition and custom with a strong background of religious injunctions in its favour. But it is chiefly the fear of public opinion of the community which gives strength to a general pre-disposition among the parents in favour of early marriage. The authority of Manu is generally quoted among the Hindus in favour of early marriage but I am not aware of what penalty is prescribed for its breach. It is generally considered to be a "sin" to marry after puberty, but the postponement of consummation after puberty is not regarded as a sin.

8. Yes, Gauna is usually performed in most communities in these Provinces. It is often several years after the marriage if the marriage is performed very early. "Gauna" very often coincides with consummation of marriage and is generally performed some years after the attainment of puberty.

9. Attainment of puberty is not at all a sufficient indication of physical maturity to justify consummation of marriage? In my opinion 18 is generally the age when the girl reaches her full growth and when consummation of marriage may take place without injury to her health and to that of her progeny.

10. In my opinion 18 years, the age of majority generally recognised in India, is the proper age when a girl could be considered competent to realise intelligently the consequences of her consent.

11. I have no experience of any particular case where I could give a detailed account of the bodily injuries sustained by a girl.

12. I am decidedly of the opinion that early consummation of marriage, and consequently early maternity, is to a very large extent responsible for high maternal and infantile mortality. Besides high mortality it seriously affects the physical health of most of our women and of the younger generation. Still more than physical ill-health the present system of early marriage and early consummation of marriage is a serious hindrance to the intellectual progress and mental happiness of our girls. I need not dwell at length on the very serious obstacle early marriage proves to be in their education. Secondly, when small girls are cut away from their parents at a very early age and suddenly thrown into strange surroundings at a period of life when they cannot possibly make a voluntary and intelligent choice, this unnatural forced and cruel migration gives a permanent shock to their young nature. The severe task of adjusting oneself to one's surroundings which baffles so many grown up and experienced persons heavily falls on those young shoulders at a tender age. Even in the most fortunate cases these poor little beings are for ever deprived of a chance to experience and enjoy the thrill, the buoyancy and the happy freedom of girlhood and adolescence. On the top of this comes the rude shock of sex experience when they are hardly out of their child stage, and they soon find themselves plunged into the deeper abyss of child motherhood, its physical pangs and its solemn responsibilities. Before they reach an age of sufficient discrimination, self-assertion and self-control they already become mothers of two or three children. Thus in a large majority of cases the child-wives and child-mothers pass through experiences of mental suffering and cares at a period of life when they should feel happy and free. I look upon this stunting of their mental and moral growth as a much greater injury than merely the physical injury involved in early consummation of marriage.

13. There has been decidedly a remarkable development of public opinion during the last few years, particularly amongst women themselves, in favour of later alliances and later consummation of marriage than what is provided for in the amendment of the law in 1925. It is true it is so far confined to the educated and progressive section of the community, but that would be no argument against further extension of the age of consent by law. Modern progressive National States do not allow themselves to be

guided by the most conservative and reactionary social elements but are ever watchful of true national interests and social well-being.

14. I do not think that among the better classes even orthodox women favour early consummation of marriage, although owing to a thoughtless adherence to custom and tradition they are often in favour of marriage near puberty. But the new generation of women is very strongly in favour of later marriages and a very much further extension of the age of consummation of marriages for their children.

15—16. So far as I know in cases of offences under sections 375 and 376, Indian Penal Code, considerable difficulty has been experienced in determining the correct age at or near puberty which varies between 12 and 14. These difficulties would be materially reduced if the age of consent is fixed at an age much above 14. It should be at least 18 for marital and the same for extra-marital cases, with the safeguard and provisos recommended in my reply to the succeeding questions for marital cases.

17. To my mind early marriage is the very root of the evil as it necessarily leads to an early consummation of marriage. It is hopeless to expect that if marriages are allowed at any age before puberty, the consummation of marriage could be postponed long after puberty and effectively controlled by legislation. I hold that in the long run it would be easier to regulate the minimum age of marriage than to regulate its consummation. Society would much rather tolerate the fixing of a minimum age for marriage than tolerate an unnecessary interference with domestic affairs of a most delicate and intimate character. I would strongly recommend that the minimum age of marriage should under law be fixed at 21 for boys and 18 for girls and for consent also at 18. But at the same time, regard being had to practical difficulties and to the need of educating public opinion in its favour, I would advise the introduction of a proviso that for the next 6 years immediately after the passing of the Act the minimum age of marriage for boys be fixed at 17 and for girls at 14. The age of consent should also be 14. This minimum is to be automatically raised by one year after every six years till the minimum of 21 and 18 for boys and girls respectively is reached in 24 years. The advantage of this course will be that public opinion will have been sufficiently prepared in the meantime by means of education and social propaganda and also by means of an intensive propaganda by the State itself. I maintain that it is necessary to fix the statutory minimum of 21 and 18 for marriage for boys and girls respectively from now, so that the people may distinctly know what they will be ultimately required by law to do. It will have in itself a very useful educative effect and the country shall be saved from long and protracted enquiries on this question every time and from conflicting and hostile propaganda on both sides.

Marital and extra-marital offences must be separated into different offences. Marriages before the age fixed by law should not be made *null* and *void* but should certainly be penalised. In marital cases punishments for breach of law as regards the age of marriage should be a heavy fine which will be of a deterrent character, or simple imprisonment for 6 months or both, according to the gravity of the offence. While in cases of Rape by the husband imprisonment of either description for two years if the wife is under 13, and fine or simple imprisonment for two years if the wife is 13 but below the age of consent specified in law for the time being. They should all be summons cases, bailable but non-compoundable with no arrest without a warrant.

In extra-marital cases the age of consent must be fixed at 18 with the punishments now provided for.

18—19. For extra-marital cases the present procedure of trial will do, but it will not at all be suitable for marital cases. But before I deal with the procedure to be adopted in case of marital offences I should like first to state the procedure by which marriages should be registered. For this purpose it is necessary to utilise the agency of Municipal and District Boards and other local self-governing bodies. They may be required to

register marriages just as they are required to register births and deaths and to prepare other vital statistics. Section 298, J. (b), of the United Provinces Municipalities Act, 1916 empowers the Boards to make bye-laws for the registration of marriages and, if the Local Government so requires, they are bound to make such bye-laws. These local bodies may be further required to form a new Committee which may be designated as "Women and Children Welfare Committee" on which, as far as possible, they are to elect as well as to co-opt women. Besides, the Board should appoint as many Sub-Committees in its different wards as it may consider necessary. As far as possible women living in that particular locality and willing to work on such Sub-Committees should be appointed. Parents or guardians of boys and girls to be married should be required to report at a place and to such a person or persons as the Board may appoint, at least two months before the marriage all necessary particulars about the age of boys and girls to be married, their residence and the date, place and approximate time of marriage. After such information is received it would be open to members of Ward Committees or Mohalla Sub-Committees, to pay a visit to the family and in cases where they find that the age is less than required by law they should warn the parents or guardians and persuade them to postpone the marriage. They should simultaneously submit a report of the same to the Board. Parents and guardians should further be required to submit a second report within a week after the marriage has actually taken place. In cases where the Board is satisfied that the age of marriage is below the age specified in law for the time being the Board shall prosecute the offending parents or guardians. The trial in such cases should, as far as possible, be before a bench of women Magistrates specially appointed to deal with such cases. Every Local Board should appoint a qualified lady Doctor to examine and give medical evidence in cases of doubt where such examination and evidence may be necessary. The income from fines, etc., will probably cover the additional expenses of the Board and, if necessary, a nominal fee of two annas for every report may also be charged. In cases of "Rape by the husband" the offending husband will also have to be charged. In rural areas the services of Tahsil or Taluqa Committees and Village Panchayats will have to be utilised for this purpose. The procedure suggested above does not give the police any hand in prosecuting marital cases. The agency through which control is proposed to be exercised is mostly non-official, and it is hoped it will in the long run prove a much better safeguard against collusion and corruption.

20. As I have already explained in my replies above. I do not think that without fixing the minimum age of marriage legislation for only fixing a higher age of consent will have much effect. Although public opinion confined only to the illiterate and orthodox section will at present be against fixing a minimum age for the marriage of girls yet with the spread of education and of modern ideas among the people this opposition has grown less and is bound to grow very much less in no distant future. And then, I have no doubt, Society will very much prefer a Statutory minimum for marriage rather than prosecution in public in regard to the consummation of marriage.

21. It cannot be denied that education and social propaganda of reform is the most effective solvent of social evils, but this should not rule out all legislation which may be simultaneously helpful in checking and eradicating social evils. The excess of caution and hesitation displayed at present by Government in legislating for the removal of serious and cruel social evils was, happily, not the policy of British Government when it introduced and enforced legislation to stop the cruel practice of *Sati* and of female infanticide or when it sanctioned the remarriage of widows. I would repeat that Modern National States all over the world do not allow themselves to be guided by the most conservative and reactionary social elements but are ever watchful of true national interests and social well-being. A courageous action on the part of the Government is again needed in the regulation of the age of marriage and of the consummation

of marriage in India, and it is my earnest prayer to the Committee that it may be pleased to make a bold and strong recommendation to that effect to the Government.

**Oral Evidence of Pandit IQBAL NARAIN GURTU, M.L.C.,
Benares.**

(Benares, 11th January 1929.)

Chairman : Are you connected here with any social reform movement?

A. I have been connected more with religious, educational and political movements.

Q. Do you think that there is at present a breach of the statutory law which stands at 13 with regard to the age of consent?

A. I am afraid that there must be breaches.

Q. I believe you know that they do not come to light.

A. Yes.

Q. Is that the reason why you suggest a law of marriage?

A. It is one of the reasons but not the sole reason.

Q. Can you suggest any method by which marriages may be permissible at any age but consummation of marriage could be definitely postponed so that maternity can be avoided till a girl is complete 15 or 16?

A. Personally I hold that the only solution is having late marriages because once you have early marriages you cannot expect that consummation of marriage will be postponed long after puberty. The only solution is to have late marriages.

Q. You know that there is a very strong orthodox feeling which believes that pre-puberty marriages are essential. Is there, therefore, any way of preserving their feeling in tact that is to say permitting them to have marriages whenever they like, and securing maternity at a late age?

A. I am afraid that you cannot secure maternity at a late age. It will not be effective. When once a marriage has been celebrated, the State cannot interfere very much with the domestic life and if it does the society would naturally resent it. What I personally think is that there will be more resentment if you enforce later consummation but allow early marriage. Of course in the beginning the orthodox people will be dissatisfied with any legislation fixing the minimum marriageable age but it seems to me that after some time the society would rather tolerate this than tolerate unnecessary interference in domestic affairs.

Mrs. Nehru : May I ask you whether the same means which you have suggested for preventing early marriage can be used for preventing breaches against the age of consent law?

A. Even the law as it at present stands is not effective; and if you raise the age of consent and allow marriage at any time, it will be still less effective.

Q. You have suggested the formation of Sub-Committees on whom you have laid the duty to find out breaches of the marriage law. If the same Sub-Committees are utilized for this purpose of finding out breaches of the consent law, will it not work effectively?

A. I am afraid families would resent it very much because one cannot very well go and put such delicate questions and ask whether a marriage has been consummated in the case of a particular girl or not. I am afraid the society would resent it and it will be very difficult to find whether a girl has been consummated or not unless you have a medical examination which is all the more worse.

Q. Supposing instead of these sub-committees of municipalities if committees of ladies are appointed for this purpose, will they be able to work?

4. Ultimately it will lead to medical examination.

Q. Not necessarily because in these cases it is not necessary to hunt out breaches of the law. If out of 100 cases 5 cases are brought to light, they will have a deterrent effect on the rest. Therefore even if cases of pregnancy are brought to light, they will be sufficient.

A. Supposing even if such an enquiry is started by a lady, and if an untrue reply is given, how are you going to establish that consummation has taken place below the prescribed age? But don't you think that if there is a law as regards the marriage, then it could be better regulated?

Q. As far as that goes it is all right. Supposing it happens that the marriage law is not passed, what is the second best thing for our purpose?

A. If the marriage law is not passed, the second best thing is to have a consent law, in which case the committees should go and find out the cases.

Q. But will they be able to work at all or do you think they will be so unpopular, as to be unable to work.

A. They may not be so very unpopular but I feel that their work will be absolutely ineffective in finding out the true facts.

Q. If such committees as suggested by you are appointed, do you think that their work will be easier if the punishment to be given to those who break the law is in the form of a bond?

A. I don't think that taking of a bond will help you. Who is going to find out whether the covenant has been observed or not?

Q. But the taking of the bond will imply the necessary separation of husband and wife till the prescribed age. So what objection would you have in taking a bond?

A. That would upset the family life very much. Supposing the girl wife has no parents where will she be sent?

Q. Don't you think the same objection applies to the marriage law as well in the case of a girl who will have no parents? Where can she live till she reaches the prescribed age?

A. I think the cases of uncared for girls are very few. As long as they are not married they either live with their parents or their relations or guardians or friends. But after they are married, if their parents are not alive, then even the friends won't like to keep them with them and take any further responsibility. Supposing a girl is married very early and then consummation takes place also very early and if she is separated from her husband, where is she to go?

Q. Cannot she either go to her parents or relations or to some Home if nobody exists?

A. It seems to me that the taking of a bond will be absolutely ineffective.

Mr. Mitra: Are you ready to provide for exemptions in the marriage law in very hard cases?

A. I am afraid that once you do that there will be practically more exemptions and that you will be making your law ridiculous.

Q. Do you know that in Madras the Brahmins though they get their girls married earlier, consummation never takes place before the girl attains puberty?

A. That is so in this province also.

Q. Is there no consummation taking place here before a girl attains puberty?

A. I am not prepared to say that. After the Gaona ceremony the girl is sent to her husband's house. I should think that in the national interest and in the interests of the health and moral growth, there are certain steps which are absolutely necessary should be taken and especially in this matter the State should introduce a legislation otherwise the evils will never be eradicated.

Q. What punishment have you suggested for infringement of the marriage law?

A. I have said fine or six months' imprisonment.

Mr. Bhargava: You have further suggested that at least two months before the marriage all necessary particulars about the age of boys and girls, etc., should be supplied and that another report should be submitted within a week after the marriage and that a bench of women Magistrates should be appointed to deal with such cases to know whether the marriage was celebrated below the prescribed age and that a lady doctor should give evidence in cases of doubts after examination. Have you suggested all these methods with a view to dissemination of the knowledge of the law amongst the public?

A. Both control as well as dissemination of the knowledge of the law. What I have said there is this, that it would be open to the members of this sub-committee to visit that family and if they find that the girl is below 13 or 14 as may be fixed by law then, then they should persuade the parents to postpone the marriage and to warn them of the law which they will have to face.

Q. So is this a part of the propaganda for the spread of the law?

A. This propaganda may if possible stop early marriage.

Q. Have you suggested these methods only to find out if the marriage law is broken?

A. Yes.

Q. Then what do you mean by your suggestion that after a week of the marriage a report should be made to the Board?

A. I have suggested reports at two stages. The first report is to be made two months before the marriage so that it may be open to the sub-committees to make any enquiry if they deem it necessary. At that stage I have suggested that there may be propaganda and persuasion and the second report is to be submitted within a week after marriage.

Q. Then it follows that in case the committee members or the lady doctor are of the opinion that this is not a fit age, they can prosecute the offender. Is it not?

A. They will only report that in their opinion that a certain marriage has taken place and that the girl is below the prescribed age.

Q. Will it not be an inquisition into the domestic affairs?

A. This inquisition will be more tolerable than the consummation of marriage.

Q. I could see your suggestion that after the marriage there should be a report. But your suggestion that two months before the marriage there should be a report giving the information, etc. I doubt the efficacy of this report.

A. I thought that that will be more helpful because most of the people will be ignorant of the law and if information is sent and if anybody goes and just has a talk with them and tell of them of the law, they may probably postpone the marriage.

Q. Would you like to have this work done by private organization and not insist upon a statutory committee and the lady doctor?

A. The private organizations will not be debarred in exercising any influence they would like to.

Q. If you propose, that this committee or a lady doctor can go into a person's house to ascertain these facts, will it be liked by the public?

A. I haven't said that a lady doctor should go and examine the case to know whether the offence has been committed or not.

Q. Supposing if some members as suggested by you of the committee go to a person's house, will it be open to him to say that he will not receive them?

A. He can.

Q. Will they not have a right of entry into his house?

A. Not necessarily. If you give a power to a certain Board I don't wish that they shall go but I say that they may go.

Q. Do you think that this kind of work will be practical in villages also?

A. It will be easier there because people are more familiar with each other.

Q. Will all these nominations to the committee be made by some authority?

A. I haven't gone into those details. It may be partly by election, co-option and so on.

Q. Do you realize the fact that the assistance of a lady doctor will not be available?

A. I say that there may be a salaried lady doctor of the District Board and the Municipal Board.

Q. You have proposed that there should be some propaganda in respect of these matters. So far as the particular objects are concerned, I want to know in what concrete form the Government should spend money.

A. Over pamphlets and giving information to the people as to what other nations have been doing and so on.

Q. If the age of consent is raised to 16 do you not think that in the absence of the marriage law this consent law will act as a very great thing which will prick the people now and then?

A. It may prick a few people but it will not help the national advancement. A few people you may be able to catch but it will be a very great hardship to catch a majority of the cases.

Q. How do you think that the cases will come to court according to you?

A. They will come to the court.

Q. Don't you know that the number of cases coming to the court will be so infinitesimal? What is your own opinion about this law?

A. It is a dead letter. That is why I maintain that there must be a marriage law.

Q. Then why do you want to increase the age of consent?

A. Because I am not satisfied with the present consent age.

Q. But don't you think that, according to you, the age of consent law would work a great hardship and if the boy is prosecuted and punished, it would take away the bread of the girl?

A. This will be a matter for the court to decide taking into consideration all the facts of that particular case as to what should be the maximum punishment and so on and if the court is satisfied that it will work as a hardship on the girl probably the judge may lessen the punishment.

Q. Do you want then to have these cases tried as summons cases?

A. Yes. I wouldn't allow the police to have a hand in these matters and if you have it as a warrant case necessarily it becomes a police case. These cases therefore can be tried as summons cases.

Q. So far as the question of bonds are concerned, when Mrs. Nehru asked you whether bonds may be taken for separating the husband and wife till the prescribed age, you are of this opinion that they will be ineffective. Will not the bonds be effective as preventives?

A. I say that there is too much unnecessary interference with the domestic life and it will make your law very much unpopular.

Mr. Yakub: You say that the parents should give two months' notice of the marriage. Don't you think that in certain cases it will work very hard where the marriages are arranged within a week?

A. I believe that there will be very few cases like that at least amongst the Hindus. The reason why I suggested two months is that it always takes two months' time for the Board to go through this information and then it is sent to the members of the committee who may not find time to go through it and so to cover all contingencies I suggested two months but I am prepared to reduce it to one month if in practice it is found that it will work hardship. I only thought that that will give sufficient time for the machinery to move.

Q. Mr. Mitra asked you about the exemptions and he gave you also several examples. You know that there might be certain cases in which if the marriage is not performed it may be detrimental to the girl herself. Even in that case will you not allow marriage to be performed with the permission of the judge?

A. What will be the evidence?

Q. Supposing there is an old man and he wants to marry his girl before he dies and there is 'nobody' to look after her after him, in such a case won't you make an exemption?

A. I would bring forward all those reasons in my defence when I am prosecuted and appeal to the judge for mercy otherwise how are you going to define these exemptions?

Q. Can you not say that it is to the best interest of the girl that the marriage should be done and an exemption should be made to that effect?

A. The words "best interest" are very big things here. You may confine these words if you like to health. You may obtain a medical certificate. As I said before, if you make an exemption public opinion will be against the law.

Mr. Kanhaiya Lal : Do you call this marital offence a domestic offence?

A. Strictly speaking from a larger point of view I call it so which is against the best national interest.

Q. Would you advocate the constitution of a domestic court consisting of a Magistrate and two non-officials to try these marital cases?

A. I have suggested that such matrimonial cases should go before a bench of Magistrates as far as possible consisting of women.

Q. Would it not be necessary or desirable to have at least a senior Magistrate to be associated with these non-officials so that the procedure and other things may be properly regulated?

A. I haven't gone into those details. Surely if you mean a stipendiary Magistrate I have no objection to your suggestion.

Oral Evidence of Thakur SHIVSHANKER SINGH, Private Secretary to Raja Motichand, Benares, Thakur RAJWANT SINGH, Udal Pratap College, Benares, and Thakur LAUTU SINGH GOUTAM, Joint Secretary, Kshatriya Association, United Provinces.

(Benares, 14th January 1929.)

Chairman: What is the age of marriage and what is the age of consummation amongst the Kshatriyas?

A. (Thakur Shivshanker Singh.) The age of marriage begins from 5. The age of consummation depends upon something which I will explain to you later on.

Q. Have you Gaona ceremony?

A. Not in all cases. Mostly amongst the Kshatriyas as soon as the marriage is done, the girl is not allowed to live in her parent's house.

Q. Does actual co-habitation take place in a large number of cases below 13?

A. There is no bar to it.

Q. But I hope it is all after puberty in any case or not necessarily.

A. Not always. I think that in 50 per cent. cases co-habitation takes place before puberty.

Q. In these cases what is the difference between the age of the boy and the girl?

A. If the girl is 12 or 13 the husband is 15 or 16. Sir, I would like to divide my class into four classes. The first class is the Maharajas and the Rajas. The second class is the well-to-do persons amongst whom the marriages are celebrated mostly at the ages of 8, 9 and 10. Then comes the third class who are only ordinary people and these people want to range as higher class people and they imitate the second class and amongst them there is a law of ill-matching, i.e., the boy is sometimes 16 and the girl is 12 and *vice versa*. I say that as the match itself is concerned it is very bad but they want to see their girls married in a good house.

Q. That is to say marriages don't take place necessarily in the interests of the girls concerned.

A. Yes. And then the fourth class is the poor class. Amongst this class marriages are very rare. It is very rare that they get an opportunity of marrying with the result that when they become very old they sell their property and buy a girl and therefore consummations take place as early as possible.

Q. Have you remarriages in your castes?

A. No.

Q. Would you prefer a marriage law to mend all these evils?

A. I fear that unless there is some legislation there can be no reform. We have tried for reforms and we have failed. We have been trying for reforms for the last 30 or 40 years. The Rajput Sabha if it has not done anything else, has been crying from the platforms always to raise the age of marriage and it hasn't succeeded in its attempt to do so.

Q. Do you think that the sanction of the law is necessary?

A. Yes.

Q. Do you feel that it is an evil and affects your girls?

A. Certainly we do feel it.

A. (Thakur Lantu Singh Gourtan.) In fact the main cause for bringing this Sabha into existence is to do away with these social evils.

Q. What age has your Kshatriya Sabha recommended for marriage?

A. 14 for girls and 18 for boys.

Q. Do you think that in a large number of cases the Age of Consent law which now stands at 13 is broken?

A. Yes.

Q. Can you suggest any measures for making this law effective?

A. (Thakur Shivshanker Singh.) You should raise the age of marriage. Personally I think that the age of marriage should be 16. When I say 16 I am speaking for a very large section of my community.

Q. What age would you fix for the Age of Consent?

A. 16.

Q. What age would you recommend for extra-marital cases?

A. (Thakur Rajwant Singh and Thakur Lautau Singh.) Not below 18.

Q. (Thakur Shivshanker Singh.) What I say is that when a certain girl has arrived at the age of 15 or 16, there ought to be a sort of license sold in the post office which should issue a certificate to the effect that the man can marry his girl.

Q. Don't you think that it will be a very great hardship on the people?

A. (Thakur Lautau Singh.) That will be a serious encroachment upon one's civil rights.

Q. Don't you expect that if there is a law of marriage it will generally be obeyed?

A. (Thakur Shivshanker Singh.) If you are going to place other steps afterwards for instance if a man breaks the law, the result is that he will be punished, this will be a much great or botheration, and the buying of a certificate will be a very small botheration.

A. (Thakur Rajwant Singh and Thakur Lautau Singh.) We don't agree with Thakur Shivsanker Singh on this point. We say that the certificate business will be a very tedious process for the villagers.

Q. Do you know of any cases in your community where the mothers have suffered and the children have suffered?

A. (Thakur Lautau Singh.) A friend of mine married a young girl aged 12 and she got a female child and for years together he had no child. He told me confidentially that the health of his wife has been shattered owing to early co-habitation.

Q. When was this?

A. This happened ten years ago.

Q. Do you know of any recent case?

A. (Thakur Rajwant Singh.) In my own village there was a widower who was only about 30 years old and he married a girl of 12 and he got a child after two years, and the wife is now suffering from hysteria and so many other diseases.

Q. What about the children?

A. The children are very weak.

Q. Has she never had another child?

A. For the last 5 or 6 years she has had not a second child.

Q. Do you attribute the sufferings of these young mothers to early maternity only or it is only one of the causes?

A. (Thakur Lautau Singh.) This is only one of the causes and I call it a secondary cause. If they had sufficient to eat, very good clothing and very good housing, etc., I think they would be far from suffering. Our Sabha has reconciled the orthodox and heterodox views and therefore I believe that in the name of the Sabha, you can take it from me that 14 is the happy minimum of the Sabha, 12 is the old ideal and 16 is urged by the advanced. As regards legislation we can speak for ourselves but I don't know what the attitude of the Sabha will be.

Q. But if we fix the age at 14 for marriage, will that be accepted by all?

A. Yes.

Written Statement, dated the 21st August 1928, of Mr. RAM SWAROOP, Secretary, Arya Samaj, Ghazipur.

The Arya Samaj, Ghazipur, duly received your letter of the 27th July 1928, and in reply thereof states the opinion of its members as follows:—

1. There is no doubt that the question of fixing the Age of Consent for the purposes of Sections 375 and 376, I. P. C. is agitating the minds of the well wishers of humanity. The legislators are busy on this question since the very advent of British rule in India. Unfortunately the so-called principles of the orthodox Hindu community were very perverted and had become against the Vedas whereas ostensibly they were represented

to be according to the dictates of the Vedas. For example the following text was put before popular interested people:—

सष्टवर्षा भवेद गौरी नव वर्षा च रोहिणी,

दशवर्षा भवेत्कन्या ततश्चैव रजस्रसा ।

माता चैव पिता तस्या ज्येष्ठो भ्राता तथैव च,

ययम्मे नरकायान्ति दृष्ट्वा कन्यां रजस्रसाम् ॥

श्रीमन्नवोचः ।

The British Government from the very beginning of their rule declared that they would not interfere with the religion and religious susceptibility of the people of India, and would govern them according to their own personal laws. It was more than impossible under these circumstances to lose sight of such text as I have quoted above. Yet the greatest English law giver could not kill his conscience altogether, and I believe, it was against his conscience still that he was obliged to put down 12 years as the Age of Consent for the purposes of Sections 375 and 376.

But society has advanced, and with the spread of civilization and education, and more so from the time of the advent of the Arya Samaj, the people of India to-day feel the pinch of the legal Age of Consent. To-day we are in possession of the news showing the great havoc produced by this sanction of law, and we find that voice is raised unanimously against it from all quarters of the world. Everybody does feel that this age of 12 or 13 years as the Age of Consent is a black mark on the good name of law and humanity. We the members of the Arya Samaj, Ghazipur, appreciate the good officers and the gentleman who are helping to revise this law and strongly recommend that the "Age of Consent" be raised to 16 years for the purposes of Sections 375 and 376.

2. (1) We are not in favour of retaining the law of the Age of Consent as it is.

(2) We are in favour of making an advance on the present law and we give our reasons as follows:—

1. In such cases under Sections 375 and 376, we generally find that girls of tender years are generally the victims. They cannot resist the brutal force applied by their seducers as well as they have no courage to avert this danger.

2. On account of their tender age they sometimes can not understand the whole internal business.

3. If the girls were of mature understanding and advanced age, they would understand the wiles of the wicked and would be in a position to defend themselves.

Under these circumstances girls should be protected from indecent assaults and the violation of their chastity by a very stringent law. (Other points as given by the Secretary in his own replies 3 and 4.)

The mere raising the Age of Consent won't do. So long as there is no law to prohibit the marriage of girls under the age of 15 or 16 there will be no good result in this matter. The cases of rape are not so frequent as the misuse by husbands so far as girls under the age of 14 years are concerned. There is no doubt that public opinion has undergone a good deal of change for the better in this respect.

I am quite sure if the question of raising the age of marriage is definitely put down by the Government and the age of the girl is fixed at 15 or 16 there will be a good deal of hue and cry, but the momentary trouble will pass off after sometime. If some people raise their voice against this measure, there will be men to support it also.

5. India is a vast continent. It is not a small country. The climate differs at different places. The age of puberty therefore, is between 13 and 15 years. (Other points same as Secretary's report.)

6. Generally this evil exists in this part of the country. The child marriage is prevalent here. Hence this shameful state of affairs exists here.

7. I have referred to this question in my reply to Question No. 1. This theory is being discountenanced by the masses now.

8. As the Secretary reports.

9. The great Rishi Swami Dayanand has given a passage and has referred to the medical texts also on this point, which I quote as follows:—

जीणि वर्षाण्डेतेत कुमार्यृतुमनी सती

अर्धतुक्कादादेतस्माद्विदेत सद्यंपतिम्

मनु० (८-८०)

अनयोऽश्ववर्षायामाप्नातः पञ्चविंशतिम्

यद्याधत्ते पुमान् गर्भं कुक्षिस्थं सविपद्यते ।

जातो वा न चिरंजीवेत् जोवेद्वादुर्बलान्द्रियः

तस्मादत्यंतवालायां गर्भाधानं न कारयेत्

सुश्रुत शरीरस्थाने अ० १० श्लोक ४७-४८

10. The Indian girl is generally a very reserved and bashful maiden. She thinks that her husband is her Lord and God. She thinks that to obey her husband is to please her creator. Therefore I would not base my opinion on this sort of consent. I would raise the age of marriage instead of raising the Age of Consent. All the same 16 years can be fixed as the age at which a girl can intelligently understand her own welfare.

11. Secretary please revise the language.

12—13. Just what Secretary reports.

14. No, absolutely not.

15. Generally it is rather difficult to find out the exact age of the girl. Sometimes medical evidence is brought on the record of cases. The doctors do not give any definite opinion and sometimes unscrupulous doctors intentionally or unintentionally give wrong ages.

I would suggest that more care should be used to get the maternity cases registered as well as a birth certificate should be obtained at the time of birth. The maternity and child welfare scheme is a very good and excellent one. I would suggest that the Government should be approached to grant more liberal grants for this purpose.

16. I think this marginal difficulty would be avoided if the Age of Consent is fixed at 15 years.

17. It would be useless to make any difference. Yet I think much can be said in favour of a husband. He would generally care for the health of his wife. If even 14 years is fixed in case of marital conditions there would be no harm.

Punishment provided by the law in both the cases is quite sufficient.

18. The offences under Section 376 may be heard and decided by a Magistrate 1st class so far as the husband is concerned, other offenders should be dealt with by the Session Judge.

19. The existing law and procedure is alright.

20. In my opinion the minimum age is alright, because it would be more in consonance with public opinion for the present.

21. Social and educational propaganda is alright. But what we want is a penal law for bringing about the peaceful revolution in this respect.

Oral Evidence of Mr. RAM SWAROOP, Secretary, Arya Samaj, Ghazipur.

(Benares, 12th January 1929.)

(Vernacular.)

Mrs. Beadon: Are you the Secretary of the Arya Samaj, Ghazipur?

A. Yes.

Q. How long has the Samaj been in existence?

A. 17 or 18 years.

Q. What is the membership of the Samaj?

A. There are about 40 or 50 registered members.

Q. What is your work? Do you go round in the villages?

A. We go to the villages also.

Q. What is your particular work?

A. We carry on social reform work and preach religion.

Q. Do you try to help people in stopping early and child marriages?

A. I was married at the age of 20. My brother who is a student of the 2nd year class is now about 22 and he has not yet been married. We set these examples for others to follow.

Q. When are girls usually married?

A. 15 or 16. We marry them 3 years after the attainment of puberty so that proper development may take place and there may be no difficulty in child-birth. We are growing weaker and weaker. Our forefathers were much stronger. We must stop this evil of early marriage.

Q. What is the age of marriage in Ghazipur generally?

A. It is different among different people.

Q. What are the classes that you have in Ghazipur?

A. Every caste, from Brahmins to Sudras. Among the Brahmins marriages take place early. We have a widow home and all Brahmin widows have run away from their houses.

Q. Among the Brahmins what is the age of marriage?

A. From 9 to 16.

Q. Besides the Brahmins what other castes have you?

A. Banias and Sudras.

Q. What is the age of marriage among the Banias?

A. On account of the preaching of the Arya Samaj the age of marriage has begun to rise and caste meetings have also taken place. The Kalwar Sabha has perhaps fixed 14 for boys and 12 for girls. A meeting of the Mher Kshatriyas took place last year and recommended 18 for boys and 16 for girls.

Q. What is the age of marriage among the Kshatriyas?

A. The same as among Brahmins. They are a fighting race and whenever they get leave they marry. They do not get opportunity to wait and see.

Q. What about the age of the girl?

A. Among the rich child-marriage is prevalent and the poor marry a bit late. It is not because they realise the evil consequences but because of the heavy dowry that the father of the girl has to give.

Q. What would you like, to fix an age of marriage or to raise the Age of Consent?

A. If the age of marriage is fixed that would be the best thing.

Q. What age would you fix?

A. 16 for girls and 18 for boys.

Q. Would it not be a big jump?

A. If there is a law the people will bow to it. There is always some agitation but that will subside.

Q. Will 16 be not very high?

A. Our principle is to move according to the times and whatever the times dictate must be accepted. I do not believe in compromises.

Q. Among the Arya Samajists is there a great deal of education?

A. Yes.

Q. Among the ordinary classes what is the state of education in Ghasipur?

A. There is a girls' school but they are educated only up to the 4th standard. There is no arrangement for further education. Funds do not permit of starting new schools and schools providing instruction up to a higher standard.

Q. If there is no education for girls there is nothing to occupy their minds. How are you going to keep them straight from 13 to 16?

A. Even the non-Arya Samajists keep their girls till 16. The dowry system is so heavy that they are forced to keep their girls unmarried till that age. In some cases I have noticed that a girl of 30 has not been married on account of this dowry system. In all these cases I find that chastity is not spoiled.

Q. In the villages also is there heavy dowry?

A. There also is heavy dowry. I went to a village and I saw a child who was very thin and lean and was 10 years of age.

Q. What was the father of the girl?

A. He was a landholder. He had to pay very heavy dowry. But the girl died on account of early consummation.

Q. Do you think early consummation is a very serious cause of physical degeneration? You think this must be stopped at all costs?

A. Yes.

Q. What was the caste of the girl you just now mentioned?

A. She was a Kshatriya girl.

Q. Have you seen any other case?

A. There is a disease called 'Prasant' which is a very common and is a result of early consummation and becoming mothers at a very early age. I have seen 30 or 35 such cases.

Q. What about the children of these young mothers?

A. The mothers are very thin and lean and their children are also puny and weak. This is among the higher classes.

Q. What about the lower classes?

A. It is not so bad. Among the Kurmis there is early marriage but Goana takes place when the girls are mature.

Q. What about the Ahirs?

A. Marriage takes place at 5 or 6 and Goana takes place a year or two later. But the wife only stays for a night and goes away. Then there is the Dunga ceremony and then there is the Thona ceremony. On all these occasions no consummation takes place. Consummation takes place only when the girl is mature.

Chairman: What about the girls of these Ahirs?

A. They are very strong.

Q. They say it is on account of their getting a lot of good ghee.

A. Ghee, etc., they sell it off and they take only curd, etc. Among the Ahirs a great watch is kept. Among the higher castes the watch is not so strict. I have seen many cases of consummation just on the appearance of menses. If a law is made I don't know how far it will be successful.

Q. Supposing the age of marriage is not fixed but no consummation is allowed till 16, will it be workable?

A. We want that the age of marriage may be fixed at 16.

Q. Among the Arya Samajists there is no marriage before 16?

A. No.

Q. Among the others do those girls that get 'Prasant' mostly die?

A. They mostly die.

Mrs. Nehru: Have you got any experience about villages?

A. Yes.

Q. When do marriages take place there?

A. Among the higher classes marriages take place early. The educated people have late marriage.

Q. What are the higher classes?

A. Those among whom second or third marriage do not take place.

Q. Among the Brahmins and Kshatriyas do marriages take place early in villages?

A. Yes. So long as the boy is young he is regarded as an eligible bridegroom and if he is grown up it is supposed there is some difficulty and therefore they do not get good dowries.

Q. Have the women in villages realised the evils of early marriage?

A. They have not.

Q. Have Arya Samajists taken any steps to popularize the idea of late marriages?

A. Not much.

Q. Has any meeting of women taken place in Ghazipur?

A. Yes.

Q. When was the last meeting held?

A. Last year it took place in November.

Q. Was any resolution passed regarding the age of marriage?

A. No.

Q. Was an opinion expressed about Sarda's bill?

A. They have not gone up to that yet.

Q. Are there any girls' schools?

A. There are.

Q. Is there any high school?

A. There is the Vernacular Final school.

Q. How many girls are there in that school?

A. About 50 or 60.

Q. Is there any Arya Putri Pathshala?

A. There is. There are about 48 girls in that.

Q. Is there a desire on the part of women to receive education?

A. More than before.

Q. Is there any purdah?

A. There is.

Mr. Shah Nawaz: For how many years have you been preaching Arya Samaj principles?

A. For the last 16 years.

Q. Has Swami Daya Nand written anything about early marriage?

A. Yes, he has. (The witness referred to page 82 of the Satyarth Prakash and the chapter on marriage in Sanskar Vidhi and also promised to send relevant extracts.)

Mr. Bhargava: What are the castes to be found in villages?

A. Every caste, right from Brahmins to Sudras.

Q. Are there Ahirs?

A. There are. There are Mehtars, Chamars and such other castes.

Q. Among them does marriage take place early and the girl sent soon after puberty?

A. Yes. Girls of 10 even are married.

Q. What about the Brahmins and Kshatriyas?

A. Among the rich it takes place early, but consummation does not take place before puberty. I have not seen any such case.

Q. In the cities?

A. Consummation does not take place before puberty.

Q. Have you met any case in which there was injury to the girl or the child or death occurred as a result of early consummation?

A. I have seen one girl who became mother at 12. After giving birth to three or four children she died.

Q. At what age do girls become mothers generally?

A. 15 or 16.

Q. Do not many girls become mothers at 13 or 14?

A. But in those cases there is great trouble in delivery, and the children are weak.

Q. If a law is passed fixing the minimum age of marriage at 14 and the Age of Consent at 16 there will be no agitation?

A. People have begun to feel that early marriage is harmful.

Q. What is the system of registration of births in villages in your part of the country?

A. It is not accurate.

Q. How many births, do you think, are not registered?

A. The chowkidar is responsible and sometimes the reports are made and sometimes not.

Q. If the Patwaries and Lambardars are made responsible will that be better?

A. That will be better.

Q. The Patwari may keep the register and the Tehsildar may check it. Would you like that?

A. The Patwari is heavily worked and he gets small pay.

Q. But even now who writes the names for the Chowkidar?

A. Any man who can read and write writes it.

Pt. Kanhaiya Lal: Would you like to have a law of registration of marriages, i.e., reports of all marriages being made to a prescribed authority giving the names and ages of the marrying parties?

A. That will be a good idea.

Q. Who should report, the parents of the couple or the priest also? Among the Christians the priest is responsible.

A. The parents and not the priest should report it.

Q. Who should be the registering authority? The Municipality or the District Board or an Executive authority?

A. I have not thought over that question.

Q. The present procedure is that cases under 12 go to the Sessions and cases above that go to the Magistrate. Instead of having these two forums would you like to have a matrimonial court consisting of a Magistrate and two non-officials to try these cases?

A. It is a good idea but the two non-officials should be men of high standing and of good position and family familiar with the conditions of the country and well-conversant with the customs also and should be well educated.

Q. It will inspire greater confidence and people will be more willing to file complaints before such courts?

A. Yes.

Letter, dated the 28th January 1929, from Mr. RAM SWAROOP LAL YERMA, Secretary, Arya Samaj, Ghazipur.

In reply to your letter No. 1361, dated the 22nd instant, I have the honour to give below the extracts from Satyarth Prakash and Sanskar Vidhi of Rishi Dayanand as required.

Satyarth Prakash, pages 83 and 84.—

(१) लक्ष्मीवर्माका मंगलः पञ्चविंशतिम्

यथाधत्ते पुमान् गर्भः कुक्षिस्थः स विपद्यते ।

(२) जातो वा न चिरञ्जीवेऽप्येवाद्बलेन्द्रियः

तस्मादत्यन्तं बालायां गर्भाधानं न कारयेत् ॥

सुश्रुत शरीरस्थान अ० १० श्लोक ४७-४८ ।

अर्थ—सोल्ह वर्ष से न्यून वय वाली स्त्री में पञ्चोस वर्ष से न्यून वय वाला पुरुष यदि गर्भ स्थापना करे तो वह कुक्षिस्थ हुआ गर्भ विपत्ति की प्राप्त होता है अथवा उत्पन्न हो तो चिरकाय नक नहीं जीता है, यदि जीता है तो लक्ष्मीहीन होता है ।

(३) कोष्ठी वर्माण्यदीचेत कुमार्यृतुमती सती

ऊर्ध्वं तु कालादेतस्माद्विंदेत सट्टमप्रतिम् ।

मनु० अ० ८ श्लोक ८९

अर्थ—कन्या रजस्स्रवा हुए पीछे तीन वर्ष पर्यंत पति का खोज करके अपने तुल्य पति को प्राप्त होवे ।

(४) आधेन वो धुनयन्ता मयिञ्ची श्रवदुर्धराः—नव्या नव्या युवतयो भवन्तोर्महदेवा नामसुरत्वमेकम् ॥ ऋग्वेद मं० २ सू० ५५ मंत्र १६

अर्थ—जो किसी ने दुहो नहीं उन मौखों के समान वात्सावस्था से रहित सब प्रकार के उत्तम व्यवहारी को पूर्य करने हारो कुसारावस्था

को उल्लंघन करनेवाली नवीन २ शिक्षा और अवस्था से पूर्ण वर्तमान पूर्ण युवती स्त्रियां अश्वस्य सुनियमों से पूर्ण तथा तद्वत् पतियों को प्राप्त हीके गर्भ धारण करें।

Extract from Sanskar Vidhi, small size, page 136 "Marriage"—

“कन्या की आयु १६ पुरुष की आयु २५ हीनी चाहिये”

(१) तस्मैरा युवतयो बुवानं ममृज्जमानः परि यत्थापः—सशक्नेभि शिक्षमो खेदस्मै दीदाया निधनतो हृत निर्णिगप्सु। ऋ० मं० सू० १५ मं० ४

अस्मै तिक्तो अश्वय्याय मोरोद्वाय देवी दिंधिषन्त्वन्नम्—कृताइवोषि हि प्रसर्जैअप्सु सपोयूष धयति पूर्वं सूनाम्। ऋ० मं० ५ सू० १५ मं० ५
अश्वस्याच जनिमास्य च खर्दुहो रिषः सम्पृचः पाहिं सूरोग्, आमासु पूषु परो अग्रमृष्यं नारातयो विन शक्ता नृतानि। ऋ० मं० २ सू० १५ मं० ६

बधूरियं पति मिच्छनोति यई बहति महिते मदिषी मिधिराम् आस्य अश्वस्य द्रथः आच घोषात् पु६ सहसा परिवर्तयाते इत्यादि ऋग्वेद मंडल ५ सूक्त ३७ मं० ३

**Oral Evidence of Rai Bahadur JAGEN NATH PRASAD MEHTA,
Executive Officer, Benares Municipality, Benares.**

(Benares, 12th January 1929.)

Mr. Kanhaiya Lal: Are you the Executive Officer, Benares Municipality?

A. Yes.

Q. How long have you been acting in that capacity?

A. Over two years.

Q. Where were you before that?

A. I was in the police department for 32 years and I retired as a Superintendent of Police in the Indian Imperial Service on the 1st September 1926.

Q. In what districts have you worked?

A. I have worked in Benares, Jodhpur, Ghazipur, Fatehpur and other places.

Q. Can you tell us in what communities early marriage is practised?

A. It is confined to the lower classes, i.e., amongst the Kahars, Gonds and so on amongst the Hindus of course it is practised amongst the Ahirs, Kunbis, Kurinis and others.

Q. What is the usual age of marriage amongst these people?

A. 10 and 11.

Q. We have been told by the Kunbis yesterday that they marry their girls at the age of 4, 5 and so on.

A. Some of them do so. I can say that usually the age of marriage amongst them is 5 to 10 years.

Q. When does consummation take place in these castes?

A. It takes place after puberty.

Q. What about the other classes?

A. Amongst the higher classes owing to advanced education marriages do take place after the age of 14.

Q. Do you know that the Vaishyas and Brahmins marry their girls very early?

A. Yes.

Q. People who marry their girls early amongst the Brahmins and Vaishyas do they form a very large number amongst them?

A. Yes. Amongst the higher classes those who are educated marry their girls at 14 or 15. No doubt there is a very large class of people who do marry their girls early before 10 or 11 and who want to marry their girls before puberty.

A. Can you tell us what is the practice about consummation amongst these people?

A. Consummation takes place soon after puberty.

Q. Can you tell us something about the eastern districts?

A. The same conditions prevail there.

Q. Have you come across any evil results following early marriage and early consummation?

A. Yes.

Q. What evil results have followed?

A. Abduction and kidnapping.

Q. Is it on account of early marriage?

A. If a girl is married early then a man, saying that he belongs to the house of the boy takes away the girl on pretence that some relation is waiting for her.

Q. Don't you think that this must be a case of cheating? Would she go away like that?

A. Because she does not know. What I mean to say is this, that for instance a girl is married, she has not been to her husband's house and a man comes and says to the girl's mother that he is related to such and such person and that he has been asked by them to bring the girl, the parents let the girl go.

Q. Do you think that the mother will let the girl go without being satisfied who the man is?

A. In some cases they do. This is one evil of early marriage and the other of course is the early death of these girls.

Q. Do you think that their children also die early or are they strong?

A. Their children are very weak and they die early.

Q. What do you recommend as the remedy for these evils?

A. As a retired Superintendent of Police, I will never make it penal if a man goes and marries his girl before 14. If you make it a punishable offence, there will be endless misery in the country.

Q. Why?

A. You should not leave the matter in the hands of the police because there is so much of corruption there.

Q. It has been suggested that there should be a system of registration of marriages giving the names of the marrying parties and their ages which should be reported to some prescribed authority so that this might be helpful in detecting breaches of the law. Are you in favour of this proposal?

A. Litigation will increase like anything and the poor people will of course be deceived.

Q. Will you tell us any way to detect these evils?

A. You may appoint a panchayat consisting of members of that very community to try these cases.

Q. Do you want to transfer these cases for trial to caste panchayats?

A. Yes.

Q. But they have no statutory obligation to do this work.

A. They must be given an authority?

Q. Would you have a marriage legislation?

A. I wouldn't have a marriage legislation.

Q. You are suggesting that they should be tried under that panchayat. For that don't you want a law?

A. Yes.

Q. What minimum age would you recommend for marriage?

A. At least 14.

Q. What punishment would you propose for contravening the marriage law?

A. The man may be fined, or he may be outcasted or some other social pressure may be put on him.

Q. To whom will the fine go?

A. The fine may go to the upkeep of the panchayat.

Q. What age for marriage would you recommend for boys?

A. It must be above 21.

Q. Supposing we have a marriage legislation, then do you require a further law fixing the age for consummation to prevent consummation before the prescribed age? Do you want the present law which stands at 13 to be raised?

A. In that case you will have to fix it according to the community and according to the general conditions and one rule cannot apply to all.

Q. What age would you recommend for U. P. for the consummation of marriage?

A. 15.

Q. What age would you recommend for outside marriage?

A. 18.

Q. Do you think that cases of kidnapping and rape are common in the eastern districts?

A. There are such cases.

Q. In order to check these cases do you want that the Age of Consent should be raised to 18?

A. Yes.

Q. Would you make these marital offences cognizable by police or not?

A. No.

Q. You know that under the present law, upto the age of 12 the offence is cognizable and above 12 it is not cognizable. Would you retain the present law as it is or would you suggest any change?

A. Whether the girl is under 12 or over 12, I will make the offences non-cognizable.

Q. Why?

A. Because there will be so much worry and trouble to the public.

Q. Suppose we require that all these marital cases should be enquired into only by Deputy Superintendents of Police or Circle Inspectors, would that be a sufficient safeguard?

A. I wouldn't give any chance to the police whether he be a Deputy Superintendent of Police or Superintendent of Police.

Q. Do you not see that you are narrowing the chances of detection if you don't give a hand to the police?

A. No.

Q. Then how are we to detect these cases?

A. The caste panchayats should be made responsible for reporting these cases.

Q. Would you advocate the formation of vigilance societies to look after and watch these cases?

A. Yes.

Q. It has been suggested that in all these cases the District Magistrate or the trying Magistrate should first make a preliminary enquiry before issuing a summons or a notice or a warrant to eliminate false and vexatious cases. Are you in favour of this suggestion?

A. No.

Q. Would you like the formation of a matrimonial court consisting of a Magistrate and two non-officials for the trial of these cases?

A. Yes.

Q. Would you associate these two non-officials as assessors, or jurors or co-Judges?

A. They should be associated as co-Judges.

Q. Do you think that such non-officials will be available in every district to take part in the matrimonial court?

A. Yes.

Q. Do you recommend that compounding should be made with the sanction of the court in suitable cases?

A. Yes

Q. Supposing there is a marriage register, who should keep the same?

A. In rural areas the District Boards will keep them and the municipal boards will keep them in Municipal areas.

Q. Do you think that the registration of births and deaths is working satisfactorily?

A. In Municipal areas it is working satisfactorily, but not in the villages but it can be made to work more satisfactorily there.

Q. How?

A. Now the number of chowkidars has been considerably reduced. Formerly one chowkidar had one or two villages at the most but now he has more than half a dozen villages and so the patwari along with the chowkidar should be made responsible for this. Then you will have two agencies: and the third agency is that of police officers who do come and find out whether the deaths and births have been correctly reported. At the same time you should make the revenue officers also responsible and then when the reports are received let them be compared to test if they are accurate.

Q. Would you allow this work to continue to be done by the executive authority with the police and the revenue officers?

A. Yes.

Q. If you have registration of marriages, would you employ the same agency or a better agency to do this work?

A. You can make the headman responsible for watching and sending the report and if he fails to do that you can prosecute him criminally.

Q. Would you recommend the employment of a separate staff for this purpose?

A. No.

Q. Would you recommend that in these cases where marriages are reported a free marriage certificate should be issued by the registering authority to the reporting individual so that it may be kept as a record?

A. Yes, because it would save them from worries when there is a litigation.

Q. Can you tell us how long this birth register is preserved?

A. In villages they are permanently kept.

Q. What about the Municipal areas?

A. In the Municipal areas they are kept for 60 years.

Mr. Bhargava: Do you want the perpetuation of castes?

A. I want the perpetuation in this way, viz., one caste.

Q. What about Muhammadans?

A. They may be one.

Q. Are there no different castes amongst the Muhammadans?

A. There are of course but they are not so rigid as amongst the Hindus.

Q. There are certain classes amongst the Hindus who are on the border line. How would you class those cases whose claims are considered doubtful by some?

A. I will leave their claims to be considered by their own community.

Q. So how many panchayats would you like to have in a city like Benares?

A. There should be a very large number.

Q. How many panchayats for the enforcement of this law?

A. I would like to have panchayats according to the population.

Q. Or would you like to put down by mohallas?

A. No. For instance we have got the *panchabrawidas* who may be satisfied with one panchayat and so also in the case of the *panch Gouds*.

Q. Supposing Brahmins from other country comes, say 20 of them, then they would require another caste panchayat. Is it not so?

A. Yes.

Q. Well, you have just taken the case of Brahmins. Can you classify the Kshatriyas also into two such classes or more?

A. Not more than three.

Q. How would your system work in the villages, where all classes are not represented?

A. There are villages where there are Kumbis and no other people.

Q. Are there no villages where all the castes can be found?

A. Yes.

Q. Are there no villages here at a distance of 20 and 30 miles in which all the castes are represented?

A. There are no such villages at a distance of 10 or 20 miles and so you can group these villages.

Q. May I take it that in Benares or in some other places the villages are constituted in this way that there are villages of one caste alone?

A. One caste predominates over the other.

Q. If a caste predominates then it means that every such caste will have a panchayat and that caste panchayat will not decide the cases of other classes so much so that in a village there must be a number of panchayats, according to you.

A. I say that there are no such villages at a distance of 10 to 15 miles and you won't find that exigency arising. I will take a *Tabsil* or a *pargana*

and I will put 16 villages into three groups and thus the panchayat system can be established. Even if the number is small in a certain class of people in a village, this class can be grouped in the next village.

Q. Supposing there is a marriage legislation, don't you after all see that the simple question to be decided by the Magistrate or by the deciding authority will be whether a marriage has been celebrated and what is the age of the girl?

A. Yes.

Q. Don't you see that this simple question can be decided by a member of any caste? Why do you want a caste panchayat to decide this simple question?

A. One member cannot decide this question.

Q. Why do you prefer a caste panchayat to decide this issue and not an ordinary court?

A. The caste people may be able to decide this question better than the ordinary court and there may be other extenuating circumstances also.

Q. Don't you know that the court will consider all that?

A. If you go to an ordinary court, the man will be ruined in a litigation.

Q. How will he be ruined?

A. He will have to engage a pleader and he will have to pay court fees, etc., but if there is a panchayat he can plead himself there.

Q. Do I therefore understand that you are in favour of getting these cases decided without any due forms of law and you want the cases to be decided summarily and locally? Is that what you mean?

A. Yes.

Q. You have suggested outcasting as one of the punishments. Do you think it will be effective?

A. Yes. His *Hukka pani* will be stopped.

Q. As regards reporting, you say that an obligation should be laid on the patwari, mukhia and the *Tahsildar*. Is that correct?

A. No, not on the *Tahsildar*.

Q. Can the obligation be laid on the public also?

A. Yes.

Q. Who should be the complainant?

A. The person who reports should be the complainant.

Q. Do you not like that the crown may be the complainant in every case?

A. Yes.

Q. Is there any dissatisfaction in any of the areas in which you have been a police officer that these ordinary courts are not working well?

A. It is so in some places.

Q. Would you not rest content with the present courts for trial of these marital cases if a provision is made that these cases should be given preference?

A. To me they appear that they will not expedite these cases.

Q. Then I understand that you want this new court, viz., the matrimonial court only for the purpose that the trial may be expedited. Is it not so?

A. Not only the trial may be expedited but the poor people may not be put to unnecessary expense.

Q. How do you differentiate a matrimonial court from an ordinary court?

A. You shall have to make a regulation. Of course they shall not be required to pay court fee.

Q. Supposing a provision is made that court fee needn't be paid, would you have the ordinary courts to try these cases?

A. I say that if a court is set apart only for this purpose, it will dispose of the cases as early as possible.

Q. Do you want these cases to be tried by experienced Magistrates?

A. Yes.

Q. If ordinary experienced Magistrates can be had who would have put in 10 or 15 years' service then may I take it that you wouldn't require a matrimonial court?

A. No.

Q. What about the chowkidar system in U. P.?

A. Every village hasn't got its chowkidar.

Q. What is his pay?

A. He gets Rs. 3 per mensem.

Q. How many villages has he in his charge?

A. 6 villages and some times more than 6 villages are in his charge.

Q. Is he in charge of reporting the cases?

A. Yes.

Mr. Shah Nawaz: Have you reason to believe that some married girls are consummated before they are 13?

A. It's used to be formerly but not now.

Mrs. Beadon: Do you know of any cases in which injury has occurred as a result of early cohabitation?

A. Some cases came to my knowledge in which the girls died.

Q. Did these incidents happen recently?

A. They happened some four years back.

Q. Would you give us the details of these cases as to what was the age of the girl, of what she died and so on without the names being disclosed?

A. Yes. In one case the girl was aged 14 and the husband was about 30. Of course there was early consummation and the wife died after her child-birth.

Q. Do you mean to say that she died in child-birth?

A. Just a few days after the child-birth she died.

Q. How many cases like this you know for the last four or five years?

A. Half a dozen cases.

Q. What about the children in these cases?

A. In some cases the children died.

Q. Were these cases amongst the Hindus or Muhammadans?

A. Both amongst the Hindus and Muhammadans.

Q. Were the parents very well-to-do in these cases?

A. They were in poor circumstances.

Chairman: Do you think that the law of the consummation of marriage by itself will be effective?

A. No.

Q. Can you suggest any means for making it effective?

A. Education and the young girls should be informed of the consequences.

Oral Evidence of the Health Officer, Benares Municipality, Benares.

(Benares, 12th January 1929.)

Chairman: How long have you been a Health Officer?

A. I have been a Health Officer for 16 years altogether but here I have been Health Officer for the last two years.

Mrs. Beadon : I your figures we see that at all ages say from 1-5, 5-10, 10-15, 15-20, 20-30, there is a distinct increase of female deaths over male deaths. Why is it that girls at these ages die more than the boys? Is there any reason that you can give for this?

A. I think it is almost equal except in the year 1918-19 when there was influenza.

Q. Do you think that there is a large number of girls who deliver children before complete 15?

A. Yes.

Q. Have you not got the statistics showing the ages of mothers?

A. No.

Q. Do you find any special disease in young women in this part?

A. Tuberculosis is very common.

Q. What are the diseases specially affecting the women in this town?

A. There is no special disease affecting the women in this town excepting tuberculosis.

Q. Do you get osteomalacia here?

A. Yes.

Q. Do you get much of it here?

A. No.

Q. Is child mortality fairly high here?

A. Yes.

Q. Have you started any child welfare centre here?

A. We have started a child welfare centre here in September 1926. We expect to show more results in due course but now it is too early to predict anything.

Q. Have you had any private practice during these 16 years?

A. No.

Q. What about the health of the children of these young mothers?

A. I have not seen the children very particularly.

Q. Where were you working before coming to Benares?

A. I was in Mussoorie.

Q. Do you find that the infant death rate is more here than in Mussoorie?

A. Yes.

Q. What is the reason for this?

A. Poverty, etc.

Q. Do you find greater poverty here than in Mussoorie?

A. I think the poor people are more here than in Mussoorie.

Q. Do you think that there is any difference in the age of marriage here and in the hills?

A. It is much less in the hills.

Q. Do you find venereal diseases in the hills?

A. Yes.

Q. Is it more in the hills than here?

A. Yes.

Mr. Kankhaiya Lal : Is the infant mortality higher amongst the Hindus than amongst the Muhammadans?

A. I haven't made any classification, with regard to that.

Q. Can you tell us whether early marriage is more common amongst the Hindus than amongst the Muhammadans?

A. It is more common amongst the Hindus.

Q. What is the usual age of marriage amongst the Muhammadans?

A. I am not aware of it.

Q. Do you come across any cases of pre-puberty consummations?

A. No.

Q. What age would you recommend for consummation of marriage?

A. After 15.

Q. What age would you recommend for marriage?

A. I wouldn't fix any age.

Q. Can you suggest any measures for bringing cases of breaches of the law to light?

A. As other offences are detected, in the same way this offence also can be detected.

Mr. Bhargava: How do you think that the charge will be brought home to the accused if there is no marriage law? What will be the evidence to prove the act itself? Will you agree that it will be a dead letter without a marriage law?

A. I would leave it to the social reformers to deal with.

Written Statement, dated the 14th August 1929, of Mr. BASHIR-UDDIN AHMED, Lecturer, Oriental College, Dara Nagar, Benares.

With reference to your No. 42, A. C. C. of the 27th ultimo, I most humbly beg leave to submit answers to the questions as follows:—

1. There seems to be no dissatisfaction or murmuring arising, if Sections 375 and 376 of the Indian Penal Code are enforced.

2. According to Hadis Sharif—

عن عبد بن الخطاب رانس بن مالك عن رسول الله صلى الله عليه وسلم قال في الثوراة مكذوب من بلغت ابلته اشنتي عشرة سنة ولم يزوجها ما حايث اثما فانم ذلك عليه رواه البيهقي

girls should be married at the age of 12 (i.e., girls attain puberty at the age of 12). While Fiqah of Imam Abu Hanifa says that some girls at the age of 9 attain puberty. There is no general rule applicable to every class of girls. The chief sign is running of monthly course and a conclusive proof of puberty, and it is easily found out by women.

3. No such case is brought to my notice, as yet. It might be effect of the law.

4. Yes Sir, it proved effective in every way.

5. As mentioned in the Answer No. 2 girls attain puberty in the age of 12 and it is an admitted fact by every caste.

6. No Sir, among people of high classes, in search of a fit husband, girls remain without cohabitation even up to the age of 25. It is seldom that girls can't bear chastity and when disclosed, they are liable to punishment by the court of law and society.

7. This is as in Answer No. 2. No religious injunction in this matter, but girls married before puberty often don't like their husbands either under fear or noting some irregularities and divorce is the result. This result is easy if married under guardianship of any other man than her real father or grandfather. The husband in spite of faults demands falsely the return of cash or ornament, and thus teases her. The Government may be pleased to take step against such cases.

8. Gauna among Muhammadans is so observed that girl after marriage stays at house of her father for year or years after which she goes back to her husband. Cohabitation is not checked in the meantime.

9. It depends on the condition of girls, if they are healthy, they will appear to be a child even at advanced age or *vice versa*. Those who know her, can say about her or doctors are consulted in this matter.

10. In India, a child is born generally at the 13th year of a girl.

11. If either sex is suffering under dangerous disease, the result is fatal to the child.

12. Since early marriage keeping back from evils, helps in keeping in excellent health, is surely useful help in bringing up the child.

13. No such case has been brought to my notice.

14. Yes Sir, they do.

15. No difficulty.

16. I am not hard in this matter.

17—18. These rest in the court of law.

19. This is to be impressed on both parties by means of moral culture and learning.

20. In my opinion the latter.

21. Education is the principal thing to check crimes. Penal law is used when brought to the notice of the Court of Law.

Oral Evidence of Mr. BASHIRUDDIN AHMED, Lecturer, Oriental College, Dara Nagar, Benares.

(Benares, 12th January 1929.)

Mr. Yakub: What is the book that you wish to rely upon?

A. "Shahabul Imam" is a Book on Hadis in which it is said that the Holy Prophet has said that it is given in Tauret (old testament) that if a man's daughter reaches 12 and he doesn't marry her, and she goes wrong, then the sin goes to her father.

Q. At what age do Muhammadan girls attain puberty in India?

A. From 12 to 14 or 15.

Q. In your answer to Question No. 20 you have said that you would prefer a law fixing an age for marriage. What age would you recommend for marriage?

A. 15.

Q. What age would you fix for consummation of marriage?

A. 15, but the law of the Age of Consent will not be effective unless there is law fixing an age for marriage.

Q. What age would you recommend in extra-marital cases?

A. It might be raised to 18.

Oral Evidence of Mr. MATU PRASAD, Koeri, Koeri Sabha, Benares.

(Benares, 12th January 1929.)

(Vernacular.)

Chairman: Are you the Secretary of the Koeri Sabha here?

A. I am Secretary of Koeris, Kachhis, Muraos and Kachwahas.

Q. How long have you been the Secretary?

A. For the last 17 years.

Q. What community do you belong to?

A. Koeri community.

Q. What do Koeris generally do?

A. They are cultivators and zemindars.

Q. When does marriage take place among these communities?

A. Generally girls are married from 9 to 12 years.

Q. When does puberty take place among these communities?

A. Between 12 and 13.

Q. What is the system of gaona?

A. If the age of marriage is less, then it takes place 3 or 5 years after marriage, and if the age is 11 years it takes place immediately after marriage.

Q. Does the girl go to the husband's house before puberty?

A. Yes, but consummation does not take place.

Q. Does consummation take place before puberty?

A. It is very rare.

Q. Does it take place immediately after puberty?

A. Generally it takes place 2 years after puberty.

Q. That means consummation does not take place before 15?

A. It takes place at 14 or 15.

Q. Are women and children less healthy now than they were 15 years back?

A. Those people who marry early in villages are weak but those who marry late are not weak.

Q. Are those who marry early and live in villages about 80 per cent.?

A. I cannot say but on behalf of the Sabha propaganda has been done that early marriage should not take place.

Q. Has not marriage age been fixed on behalf of the Sabha?

A. It has been fixed at 12 years by the Sabha.

Q. And for consummation?

A. For consummation no age has been fixed.

Q. Do you think consummation takes place in many cases before a girl is 13 complete?

A. It does take place but such cases are rare.

Q. Do you want to raise the present Age of Consent?

A. Yes, it should be raised to 16 years.

Q. Do you want the age of marriage to be fixed by law and marriages below that age penalised?

A. Yes.

Q. What age would you recommend for marriage?

A. 14 years for girls and 18 years for boys.

Q. What age do you recommend for consent outside marriage?

A. It should be 18 or 20.

Q. You think it will not be possible to detect cases if the Age of Consent is raised without having a marriage law?

A. No.

Q. If a marriage law is fixed, would it be acceptable to the people?

A. Brahmans would oppose it but other people would favour it. I believe that a girl becomes *gauri* at 12, *rohini* at 18 and *kanya* at 24.

Q. Is this authority started by yourself?

A. Rajaswala means attainment of puberty in both *shlokas*. I cannot say where we found it.

Mrs. Beadon : Can you give us any cases of injury to girls as a result of early consummation or early maternity?

A. Yes. If early marriage takes place girls die.

I may bring it to your notice that there is a great evil prevailing here. People come here and leave young widows or girls and they are being sold and many girls are abducted by Musalmans and others. Something should be done for that. We have now taken precautions and the Arya Samaj is also working and now the evil is less.

Chairman : Do you think if there is a marriage law this practice will cease?

A. I think it will cease to some extent. At present in towns and villages girls marry very early and when they are 9 or 10 years old the husbands die and the guardians leave them here because they think she will claim a share in the property. Now there is a rescue home on behalf of the Arya Samaj.

Mrs. Nehru : Why are there more cases in Benares than elsewhere?

A. I think it is due to the fact that they marry early and husbands die when they are young.

Q. Does this evil exist more here than at any other place?

A. It is more here on account of its being a place of pilgrimage and more widows come here.

Q. Do more widows come from Bengal than from other places?

A. No. Girls and widows from Nepal and Azamgarh Districts are brought here and they are sold. Now the evil is less.

Q. If the Age of Consent is fixed at 16, will it be effective?

A. I do not think.

Q. Can you suggest any means by which the Age of Consent law may be made more effective without the marriage law?

A. I cannot suggest anything.

Mr. Shah Nawaz : If the marriage age is fixed at 14 would not the girls go wrong?

A. No.

Q. You think in the communities of which you are the Secretary, girls will not go wrong?

A. No. When they are grown up they will understand that they will have to be married.

Q. Will women generally like this law?

A. Yes.

Mr. Bhargava : Those communities which you have mentioned—are they more numerous in this district?

A. Yes. In Allahabad they are called Kachhis, in this District they are called Koeris and in Oudh they are called Muraos.

Q. You say that your Sabha has done some propaganda work and the age has been raised. What work has your Sabha done?

A. A Mahasabha is held every year.

Q. If marriage law is fixed at 14 or 15, will your Sabha be able to do more propaganda work to popularise it?

A. Yes.

Q. Has your Sabha any school?

A. There are one or two Hindu schools, but there is no girls school.

Q. What is generally the age of those girls who are brought here and sold?

A. They are from 15 to 20 years old.

Oral Evidence of Shrimati NISTARINI DEVI of Badaun (Brahmin), Shrimati SHASHIMUKHI BHADURI of Calcutta (Brahmin), Shrimati JANKI DEVI DURGA PARSHAD, Kamachha, Benares (Vaishya), Shrimati SITA MAI, Superintendent, Basant Ashram, Benares (Brahmin), and Mrs. MADHO PARSHAD, Theosophical Society, Benares (Kshatriya).

(Benares, 12th January 1929.)

(Vernacular.)

Chairman: (To Shrimati Sita Mai) What is the number of girls in your hostel?

A. 90.

Q. What is the number of girls in the school?

A. About 300. . .

Q. What are the ages of the girls in the hostel?

A. The age ranges from 5 to 25.

Q. Are there any married girls also in the hostel?

A. There are two married ladies and the rest are unmarried. We give instruction up to the Intermediate and then coach them up privately and send them to the Benares Hindu University.

Q. Do you come in contact with the mothers of these girls?

A. Yes, some of the mothers come here and stay for some days sometimes.

Q. For how many years have you been the Superintendent?

A. 15 years.

Q. Are all girls from outside Kashi?

A. They are non-residents of Benares.

Q. Do the people know the present law of Age of Consent in the villages?

A. We receive girls from well-to-do families and we get maid servants from villages and they tell us that early marriages are current but the people do not want to send their girls to their husbands soon. I come across many ladies here in Benares who are of opinion that early connection should not take place.

Q. What age, you think, would the ladies accept?

A. Even the most uneducated amongst them think of 14 and 15 as the limit for connection. If a law is made I think the 90 per cent. uneducated will accept 14. My own idea is that the age of marriage should be raised to 16.

Q. What about the 90 per cent. uneducated? Would they not agitate?

A. They won't agitate.

Q. Have the women realised the evil consequences?

A. They have.

Q. This law you think will strengthen the hands of those who have to celebrate marriage before puberty under pressure?

A. Yes. Personally I want that the age may be 18. (All the witnesses agreed that the minimum age should be 16.)

Q. Do you think women will agree to a law fixing the age of marriage at 16?

A. I think so, because this is the custom already even among the uneducated. There are several reasons why marriages are delayed.

Q. At present the age for extra-marital cases is 14. Do you think that a girl is intelligent enough at that age to give consent?

A. A girl does not attain full maturity and understanding till 18.

Q. (To Shrimati Janki Devi.) When does marriage take place among the Vaishyas?

A. It used to take place very early and Goana was done after 5 or 7 years. But now girls are married usually at 13 and sometimes Goana takes place immediately and sometimes it is postponed. But generally it takes place.

Q. Do you think in many cases consummation takes place before 13?

A. Yes, and that is a great evil.

Q. (To Mrs. Madho Parshad.) When do marriages take place among the Kshatriyas?

A. They take place at 8 or 9 and there is no system of Goana and consummation takes place at about 12. The girl goes after marriage and comes back after a day or two and for the purposes of consummation she is not taken before 12; in some cases marriages take place at 17 or 18 also. But in any case early marriages do take place.

Q. When does consummation take place?

A. Consummation takes place even before puberty.

Q. How many such cases take place?

A. In most cases that happens.

Q. (To Shashimukhi Bhaduri.) When does consummation take place among your community?

A. Among the Bengali Brahmins here pre-puberty connection does not take place among the educated. There is no Goana amongst us. But among the Brahmins consummation takes place before puberty, immediately after marriage.

Mrs. Beadon: Have you met any cases in which injury has taken place as a result of early consummation or the child has suffered?

A. I know a case in which the child was born at 12. Two or three children were born and all of them died and the girl herself died at the age of 18.

Q. When did that take place?

A. 17 or 18 years ago.

Q. Do you know of any other case which is recent?

A. In another case the girl was 19 and she had given birth to two or three children before 19 and she got consumption and died last June. I have seen 10 or 15 such cases during the last vacation.

Q. Are the evil effects due to too frequent pregnancies or to child-birth at an early age?

A. If the first child-birth takes place late then it is likely that frequent maternity will not produce the same kind of damage but when the first delivery takes place at an early age the damage is great. In the last 5 or 6 years I know of 7 or 8 instances of girls becoming mothers at 13 and dying.

Q. Was that among the rich or the poor?

A. Among the middle class people. There have been cases of a girl of 15 giving birth to a child and the delivery being very difficult and the girl dying soon after.

Mrs. Nehru: Is there a feeling of resentment amongst the girls against early marriage?

A. There is.

Q. Do they feel that this is an evil which they have to fight against?

A. They do dislike it. Our girls even dissuade the servants from marrying girls early and they themselves are opposed to early marriage.

Q. Do you find that the uneducated girls are stronger and have less trouble in delivery?

A. I have seen uneducated girls giving birth to children and I have seen that they are sometimes weaker instead of being stronger. I don't find there is any difference between the educated and the uneducated.

Q. Have you noticed that puberty comes earlier now than before?

A. 15 years ago when I came it used to take place at 11 or 12 and it now takes place at 12 or 13.

Q. What punishment would you fix for the breach of the consent law?

A. (Shrimati Sitamai was in favour of giving 6 months to the respective fathers of the couple and all other witnesses were in favour of one year.)

Q. Won't you punish the mother?

A. No. She is not responsible.

Q. In case of a widow whom would you make responsible?

A. Therefore I say the best remedy is to fix the age of marriage. As a first step it may be fixed at 14.

Mr. Shah Nawaz: We have been told that women want that marriage should take place before puberty?

A. There are many who believe in 'kanyadan' and think that there is great merit in that.

Q. What do the Brahmin women feel?

A. The old fashioned want that marriage should take place before puberty. The present day women do not want early marriage.

Q. (To Mrs. Madho Parshad.) What about the Kshatriya women?

A. I think they will agree with me.

Q. (To Shrimati Janki Devi.) What do the Vaishya women feel?

A. There is that religious belief in some cases that marriage should take place before puberty.

Q. Some witnesses have said that girls may go wrong if you fix the age as high as 16?

A. The widows can also go wrong. What would you do about that?

Q. Supposing the age of marriage is fixed at 15 and in some classes marriage takes place at 8 or 9 will the women come forward and report?

A. Those who are honestly for late marriage will make a report. In every Mohalla there should be a small vigilance committee consisting of men and women who should make investigation and report.

Q. What about the villages?

A. There also the same procedure may be adopted.

Q. Can you suggest anything to make the Age of Consent law effective?

A. It should be made obligatory on the parents to make a report before marriage.

Q. Will there be great agitation if the age of marriage is fixed at 14?

A. About 40 or 50 per cent. of the women will agitate.

Mr. Bhargava: Out of the 300 girls how many girls are there who are over 18 and are unmarried?

A. More than 20.

Q. And of 16?

A. More than 40.

Q. What caste are they?

A. All castes, Kayasthas, Kshatriyas and Brahmins.

Mr. Yakub: When should the report about marriage be made?

A. When it is settled that marriage is to take place between such and such boy and such and such girl the report should be made even though it may be a week or two days before the marriage actually takes place.

Q. Are there any Muhammadan girls also in your school?

A. There are 4 or 5.

Q. When does marriage take place among Muhammadans?

A. It takes place late after the 17th or 18th year.

Written Statements of persons not orally examined.

Written Statement, dated the 13th August 1928, of the Chairman, Municipal Board, Benares.

1. In our Provinces there is dissatisfaction with the state of law as to the Age of Consent as contained in Sections 375 and 376 of Indian Penal Code.

2. In my opinion the present law of the Age of Consent as it is, should not be retained, and I am in favour of making an advance on the present law for reasons as will appear from my answer to the query No. 3.

3. The crimes of seduction and rape are frequent in my part of the country and the amendment of the law made in 1925 raising the Age of Consent to 14 years has succeeded in reducing as well as preventing the improper seduction of girls for immoral purposes. In our part of the country girls are not of mature understanding before fifteen years of age, and if the Age of Consent is lower than this, people get ample opportunities of committing such crimes without being held liable under the present law, and the girls being of immature understanding fall an easy prey to such designing persons.

4. The present amendment of 1925 raising the Age of Consent within the marital state to 13 years has not been effected to a greater degree in protecting married girls against cohabitation with husband within the prescribed age limit, for the following main reasons :—

- (i) that such crimes are seldom brought to the notice of authorities and husbands feel quite safe as if no such amendment in law has been made;
- (ii) that people are very loath in changing their opinion and ways of life, they being used to early marriages and consummation from long ages past;
- (iii) their backwardness in knowledge of hygienic principles of life and living.
- (iv) The three ways suggested in my opinion the measure (iii) of putting of marriages beyond 13 would be most effective, consummation of marriage cannot possibly be postponed when the married couple live together nor can the public opinion be stimulated so soon in this direction against the existing custom of early marriage and consummation.

5. In my part of the country the girls generally attain puberty between 13 and 14 years. It differs in different castes, communities and classes of society. Among higher and rich classes of people the girls attain puberty between 12 and 13 and sometimes at 12 and even at 11 according to their mode of life and nourishment.

6. Among higher and richer classes of people cohabitation is common before the girls complete 13 years or soon after puberty and sometimes even before puberty and none of such cases ever come to Court.

7. There are no such religious injunctions to the practice of the early consummation of marriage before or at puberty. The old standing Slokas in " Porasar Smiriti " were meant to save the girls from the clutches of raiders

in early Mohammadan period. I know not of any other religious injunction in its favour or the penalties attached to it.

8. Gaona or Garbhandan ceremony is generally performed in my part of the country, it is generally performed soon after attainment of puberty, this ceremony coincides with the consummation of marriage. This ceremony is performed soon after attainment of puberty and sometimes a year or a year and a half after the attainment of puberty.

9. In my opinion the attainment of puberty is not sufficient indication of physical maturity to justify consummation of marriage. A girl's physical development will be considered for consummation without injury to her own health and that of her progeny if the consummation be postponed to two years after attaining puberty. I think this age would be 15 years.

10. In India in my opinion a girl at 15 would be competent to give an intelligent consent to cohabitation with due realization of consequences.

11. I have had no professional experience in that direction but I have come to know of certain cases in which cohabitation before puberty or after puberty but before full physical development greatly affected and impaired the health of the girl for good and rendered the progeny weak and affected the future generation. I cannot give any detail.

12. In my opinion early marriages and consummation, and early maternity is responsible for the high maternal and infantile mortality and this greatly affects the intellectual and physical progress of the people.

13. As the amendment of 1925 has done some good and as the opinion of the masses is growing against the early marriages, owing to wide spread of education, the public opinion is in favour of further extension of the Age of Consent in marital and extra-marital cases.

14. In my opinion, this view is taken generally and not by any certain classes of people.

15. Yes, the women are in favour of early consummation of marriages owing to their lack of education, and immemorial family tradition and custom.

16. Some difficulties are often experienced in determining the ages of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code. This is due to the fact that the physical development of different girls varies greatly. Sometimes a girl who has been in adverse circumstances but is of mature age looks young while some nourished in lap of luxury though young look of mature age. Medical examination and extracts from the Municipal birth registers will minimize these difficulties. If the Age of Consent is raised to 14 or more there would be less error in determining the age as at that age this difficulty would be less experienced.

17. In my opinion public policy demands that marital and extra-marital offences should not be separated and I am not in a position to say anything as regards the nature and amount of maximum punishment to be prescribed for offences of each class.

18. In view of my answer to the query No. 17, I don't think that there should be any difference in the procedure of trials in the offences within and without the marital state.

19. In my opinion, public opinion should be stimulated to help the authorities if any such cases occur.

20. In my opinion the penal legislation fixing a higher Age of Consent for marital cases is more likely to be effective than by legislation fixing the minimum age of marriage. In my part of the country penal legislation would be in consonance with the public opinion.

21. Social reform or propaganda has been going on for ages without any material progress, only penal law would secure that end.

Written Statement, dated the 18th August 1928, of Mr. HARISH CHANDRA, I.C.S., Officiating District and Sessions Judge, Benares.

1. None that I know of.

2. I think an advance should be made. For cases of abduction are very common and are as a matter of fact on the increase as far as I am aware and if there is the risk of a man being run in for rape in case of sexual intercourse with a woman under sixteen years of age even with her consent the crime is likely to decrease.

In case of a husband however I would retain the maximum of thirteen and twelve years respectively in the two sections. For such cases are not of frequent occurrence and it is undesirable to interfere too much with married life. That problem can best be tackled by the proposed bill illegalising 'infant' marriages.

3. I believe the crime of seduction is fairly frequent in these parts but not that of rape. I have no comparative figures before me and cannot answer the second part of the question.

It is only by greater police vigilance and the inflicting of deterrent punishments that these crimes can be checked. But in my opinion Sections 375 and 376 are often very difficult to make use of and although a man may be living with a woman in sexual relationship and committing acts which come under one or other of the two sections he cannot be convicted unless evidence is available of the commission of a particular act which is very often difficult to procure if the woman is a consenting party. I would therefore suggest that it may be made an offence for a man to have sexual relationship with a woman, sexual intercourse with whom would be an offence under one or the other of the two sections. Thus if a man is living in sexual relationship with a woman under sixteen years of age who is not his own wife he would commit an offence although it may not be possible to prove any particular act of sexual intercourse. Similarly a husband living with his wife who is under thirteen years of age would commit an offence although it may not be possible to prove any particular act of sexual intercourse. It may however be open to the man to prove that no sexual intercourse was committed. But whenever it is found that a man is living with a woman in such circumstances the burden of proving that no sexual intercourse has been committed should lie on the man. The punishments for these offences would however be not so severe as that for the offence of 'rape'. But they should be severe in case of a man who is not the husband of the woman with whom he is found living in sexual relationship. Legislation on these lines should have the effect of preventing the crime of seduction to a much greater extent.

4. I do not think this change in the law has had much effect on the condition of things. The reason is that the police is unwilling to interfere too much with private married life—and rightly too. It is only when a girl is seriously injured or dies and the matter comes to the notice of the police that action is taken. In my opinion this is quite right and the remedy lies in making 'infant' marriages illegal.

6. Such cases are not as far as I am aware very common. Even in classes of people where boys and girls are married early marriage is consummated when the girl has grown up. But I do not think they wait until the girl is over 13 and marriage is often consummated after puberty.

7. Religious injunction has very little to do with it.

8. 'Gaona' is the usual thing in these parts and generally precedes consummation of marriage. It is usual to perform it after the attainment of puberty. Among the lower and poorer classes it is I think usually performed soon after puberty.

9. I cannot answer this question except that in my opinion some time must elapse after the attainment of puberty before marriage is consummated.

10. I would fix the age at eighteen.

11. I cannot give any instances. The rule I think is not applicable universally.

15. The question of determination of the age of girls is indeed sometimes a difficult one. I do not think these difficulties can easily be avoided and Courts have to consider all the evidence that is before them and arrive at a decision. In cases of doubt benefit is always given to the accused.

17. Extra-marital offences must of course be separated from marital offences. The reason is obvious. The former involve moral turpitude of an entirely different kind and require a more severe punishment. The maximum punishment for marital offences should in my opinion not exceed two years.

18. I would make all marital offences bailable and triable exclusively by a Court of Sessions.

19. The present safeguards I think are enough and it would be no use complicating the procedure further by the introduction of fresh ones.

20. Legislation fixing the minimum age of marriage is likely to be more effective. But it is obvious that the penalties prescribed under any law fixing the minimum age of marriage cannot be very severe and such legislation has therefore to be aided by penal legislation fixing a higher Age of Consent for marital cases also.

21. I would rely on both. One has to aid and assist the other and without this social reform will be difficult to achieve.

**Written Statement of Rai Bahadur Prof. SHYAM SUNDAR DAS,
B.A., Head of the Hindi Department of the Benares Hindu Uni-
versity, and President, Nagari Pracharini Sabha, Benares.**

1. There is dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. This dissatisfaction is general among thinking-Indians and has been growing with the spread of education and ideas of reform, as well as experience of national deterioration.

2. (i) We are not in favour of the retention of the present law.

(ii) The Age of Consent as provided for in the present form is very low. If there is an advance made on the present law at least a substantial number of early consummations will be checked.

3. Crimes of seduction and rape are frequent in this part of the country.

So far as we are aware the amendment of laws made in 1925 has succeeded to a small extent only, but not as much as it is desirable.

In order to make the law effective we think that only a slight advance in age will not be detectable and will not have the desired effect, for a girl of 12 may very well pass for one of 13; but if the age is raised to 16 or 18, the difference will be so marked that it will be easily detectable and at the above advanced age the girl also shall have sufficient discretion to give or refuse her consent.

Besides this if a system of registration of marriages together with proof of age is inaugurated it will also have a great effect in checking the crime of early consummation among married girls. This will not require much expense, for it can be done through the agency of the present birth and death registration department, but there should be a printed form of declaration which should be filled in, signed or thumb-marked by the declarant and attested by two respectable witnesses.

4. The amendment of 1925 raised the age from 12 to 13 only which is very slight. As stated above if the age is raised to 16 the difference in age will

be easily detectable. No doubt it has had some effect in protecting girls against cohabitation with husbands in all the three ways enumerated under this question.

5. The usual age at which girls attain puberty (i.e., commencement of menstruation) is about fourteen. We do not think that this age differs in different castes, communities or classes of society but those who are brought up in well to do circumstances have early developments. Also those who are born of premature parents have a tendency to early puberty.

6. In our part of the country as marriages are very early, cohabitation also begins early, in some cases before puberty in some others soon after puberty and in many before the girl completes 13 years. Such cases seldom reach Courts as these matters take place quite in private within the four walls of a family house during late hours in the night to the knowledge of only a few of the inmates who are mostly females illiterate as well as ignorant of law and evil effects of early cohabitation and always mindful of false ideas of honour.

7. To our knowledge the practice of early consummation of marriage has no religious injunction behind it according to the verse occurring in Mitakshara, Verse 81 of Chapter 3 of Aclura Section.

It is enjoined that the husband should have intercourse with his wife, on the fourth or any of the following days up to the 16th. Otherwise he commits the sin of killing a child (i.e., not taking steps to cause the birth of one) penalty being the same as for a homicide.

8. Yajnavalkya Prayaschittachhyaya Gaona ceremony is usually performed in this part of the country but in some cases wives are sent away to their husbands' houses just after the marriage ceremony and consummation of marriage takes place after Gaona (wherever it is performed) and even before it if opportunity offers. In the matter of consummation of marriage people generally don't wait for the attainment of puberty partly due to ignorance but mostly due to want of self control.

9. We do not think that attainment of puberty (beginning of menses) is a sufficient indication of physical maturity to justify consummation of marriage, for menses do begin some years before the body is properly developed to justify cohabitation.

A girl's physical development enough to justify the consummation without injury to her own health and that of her progeny is not attained at least within three years after the beginning of menstruation.

Instances are not wanting where consummation by a husband of eighteen with his wife of sixteen caused physical injury to the wife.

10. The age would differ with education or ignorance as the case may be. In the case of an educated girl the proper age would be eighteen but in the case of an uneducated girl it may be much higher.

11. Yes. In case indicated above in question (9) cohabitation with a girl of sixteen resulted in physical injury to the girl's private parts; and the issue resulted in abortions, still-born, as also short-lived children. In some other cases of early consummation, there have been cases of laboured delivery of still-born or short-lived children.

12. Yes, early consummation and early maternity are to our mind mostly responsible for high maternal and infantile mortality. They are also responsible for shortness of average vitality, and lack of endurance as also many other evil results.

13. There does appear some development of public opinion in this part of the country as suggested, though not exactly on account of the amendment. It is general but specially among educated and the thinking classes.

14. In this part of the country women do favour early consummation of their children on account of their desire to see grand-children rather early, and on account of their ignorance of the evil consequences.

15. In a case which recently went to the Allahabad High Court, there were difficulties. As suggested above in answer to question (3) if a system of taking declaration before marriages and registration of marriages is inaugurated it will have the effect of minimising such difficulties besides checking early marriages and early consummation.

16. It will be minimised to some extent but the margin being very small it will not have the desired effect. Of course, if the Age of Consent is raised to 16 in the case of marital consummation and to 18 in the case of extra-marital cases it will be reduced materially with salutary effect.

17. Yes. In case of marital offences the period of imprisonment of the husband should not exceed the limit of 16 years of his wife's age. There should be some provision to punish those who bring about early marriages and consequent early consummation. Punishment to such men should be much higher than of the husband himself.

In case of extra-marital offences the punishment to the offender must be very heavy and deterrent. The present scale of punishment appears to be sufficient in this case, but should be administered rather rigorously.

18. Yes. The procedure for the trial of marital offences should be in camera by Magistrates of advanced age and if possible by lady Magistrates.

In the case of extra-marital offences the present procedure is sufficient but the girl concerned should be examined in camera and if possible questioned by some educated lady.

19. No. We cannot think of any except the spread of education and awakening of the people.

20. No. The raising of the Age of Consent in marital cases will not be so effective as fixing the minimum age of marriage because when children are married early consummation follows and offences do not come to Court and even parents come forward to give false evidence that their daughter is of a higher age than she actually is as happened in a case that came up before the Allahabad High Court very recently in order to save the son-in-law from being punished. The above will be in consonance with public opinion as well.

21. As the society at present exists strengthening of the penal law would be preferable, but education should also continue if possible.

In Vernacular and Anglo-Vernacular schools there should be lessons on evils of early marriage and premature consummation.

Written Statement, dated the 31st August 1928, of Mr. Y. MEHTA, Judge, Small Cause Court and Subordinate Judge, Benares.

1. In a fairly large section of the educated Indian public, there is some dissatisfaction with the state of the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, but the uneducated public is indifferent and does not think at all on this point. I would go to the length of saying the uneducated and backward masses would like to stick to the age-old practices.

2. (1) There is no justification for retaining the law of the Age of Consent as it is, except the fact that if the law be changed, it will be a novel thing for the large uneducated section of the population. In the beginning the change in law may be resented in some quarters but that is no ground for not introducing reforms, which are conducive for the uplift of the people generally.

(2) The high infant mortality in this country, the growing deterioration of the health of the population, the increase of the scourge of tuberculosis in this country and the fact that girls often lose their health owing to too early childbirth are, in my opinion, reasons which justify an advance on the present law. Sexual intercourse with a girl below 14 years of age is generally speaking cruelty.

3. Kidnapping and abduction account for a large proportion of the reported offences in these provinces. I am unable to say whether the amendment of the law made in 1925 has achieved its object in preventing or reducing cases of rape outside the marital state.

4. In my opinion the amendment made in 1925 has not been effective in preventing married girls against cohabitation with husbands within the prescribed limit in the three ways mentioned in the question. It is very rare that a wife would complain against her husband for having intercourse with her at an age below 13. Such cases seldom come to light in any other way also. This is due to the present state of Indian society. I know of only one case which came before me when I was an Assistant Sessions Judge at Cawnpore. That was a case of a Kahar girl aged approximately 11 or 12 and as far as I now recollect, that case came to light on a report of the father of the girl. The husband in that case was convicted by a Jury.

In my opinion the only effective check would be to raise the age of marriage by legislation on the lines laid down in Mr. Har Bilas Sarda's bill.

5. The average age at which the girls in these provinces attain the age of puberty is about 14. I am unable to answer the other part of the question.

6. Usually consummation of marriage takes place soon after puberty and rarely before 13 or before puberty. Among educated communities generally, the age of marriage has risen or is rising and consequently cases of consummation of marriage before puberty are almost negligible among them. It is very rare that cases of consummation of marriage come to Court.

7. This is due more to the age-old custom than to any religious injunction. There are some among the Hindus, who believe that consummation of marriage should take place soon after puberty but I do not know of any religious authority for the same or otherwise.

8. In this part of the country, gaona ceremony is common and it usually coincides with or is soon followed by consummation of marriage. It is usually performed after attainment of puberty or shortly after it. The time for the ceremony is fixed after consulting an astrologer and it may come months after the attainment of puberty or shortly after it. Cases are known in which the gaona ceremony has been performed before the attainment of puberty but I am unable to say if consummation is postponed for that reason. Parents often do not allow consummation before puberty but there may be cases to the contrary.

9. I do not consider that the attainment of puberty (by which I mean beginning of monthly periods in girls) is a sufficient indication of maturity to justify consummation of marriage. It is well-known that girls do not cease to grow for some time after that. They are also not fully developed mentally at that period of life. From the medical and physiological point of view, change in the internal structure of the female body goes on until complete maturity is reached. I think that the earliest age at which marriage may be consummated without any harmful consequences to a girl would be about 18 and in some cases, even more. In the case of precocious girls, it may be put down at 15. This is a question which medical men may answer better but I have given my own impressions.

10. In this question the words 'with due realization of consequences' are important. Having regard to these words, I believe that even a girl of 18 would not be fully competent to give an intelligent consent to cohabitation.

11. I have not collected statistics but I am sure that if they were collected, many such cases would be discovered.

12. One of the chief reasons for high infantile and maternal mortality is early consummation of marriage and more so the early motherhood.

Only a section of the intelligent classes take an interest in these matters and I believe that a great majority of the people do not know if there was any change in the law in 1925.

14. Generally mothers of girls of age about 15 and more want that their daughters should preferably reside with their husbands. In the case of mothers of sons, who have daughters-in-law, they often desire early consummation after puberty so that they may live to see their grand-children.

15. There is generally some difficulty in determining the age of girls in connection with these offences. In such cases, one has to rely on medical evidence, which is never conclusive, and oral evidence of relatives, who are sometimes unable to give the correct age. Compulsory registration of births may minimise the difficulty.

16. No. I do not think so.

17. It would be better if extra-marital and marital offences are made separate and distinct. The word 'rape' is too strong to be used in cases of offences by husbands. I would leave the question of punishment as it is.

18. In my opinion offences by husbands against their wives, who are below 13, should be tried by a Court of Sessions and in other cases, by the District Magistrate.

20. I think that penal legislation fixing a higher Age of Consent would not be so effective. I would prefer raising the age of marriage by legislation. Once we do so offences by husbands against their wives would automatically tend to disappear.

21. Both legislation and social propaganda should go hand in hand. Social propaganda in this direction has been going on from the last 25 years or so and that would appear from the proceedings of various General Social Conferences and Caste Conferences.

Generally, I would fix the Age of Consent for the husband at 14 and in other cases at 16 or even 18.

Written Statement, dated the 8th September 1928, of Mahamahopadhyaya Pandit MURALI DHARA JHA, Ramkatora, Benares.

Our Hindu marriage system is a religious duty (Dharma) which ordains a man to marry just after finishing the life of a student with a girl who has not attained puberty. The main object of the marriage is to be relieved of the ancestral debt by begetting a son by one's own legal wife. The meaning of the sanskrit word "पुत्र" (son) is one who protects from (falling into)

the hell called पुम् (Pum). Another sanskrit synonym for पुत्र is अपत्य which means one by whom the family is saved from being destroyed. Hence the Hindu marriage system is quite different from the western marriage which is a sort of contract between the husband and the wife जाया which means one in whom the husband himself is reproduced.

According to the Hindu religion a woman cannot give her consent to cohabitation with a man who is not her husband. Fornication in every case will make her liable to be ousted from the pale of society.

1. All the ancient ऋषि (Rishis), the authors of religious books, have

unanimously laid down that a girl should be married before she reaches puberty, i.e., before her first menstruation, otherwise both the giver and the receiver of the girl are cursed to fall into hell.

Gautama says—

प्रदानं प्रागृतोः—Giving over (a girl in marriage) before menstruation. Vyasa and Matsya Purana say—

- (1) अष्टवर्षा भवेद् गौरो नव-वर्षा च रोहिणी ।
दशवर्षा भवेत् कन्या अत ऊर्ध्वं रजःखला ॥
- (2) 'गौरो ददद् ब्रह्मलोकं साविभं रोहिणीं ददत् ।
कन्यां ददत् स्वर्गलोक-मतः परम सदृशतम् ॥

Translation of the above

- (1) A girl is called Gauri at 8, Rohini at 9, Kanya at 10 and after that Rajsvla (one in whom menstruation has commenced).
- (2) One by giving over (in marriage) Gauri, Rohini and Kanya attains respectively Brahmaloaka, Suryaloka and Svargaloka and hence the most desired end.

शाघायनिः मरीचिः and Mahabharat say—

- (1) तस्मादुद्वाहयेत् कन्यां यावन्नर्तुमती भवेत् ।
प्रदानं प्रागतोऽस्य अर्धं कुर्वेन् स दोषभाक् ॥
- (2) माता चैव पिता चैव ज्येष्ठो भ्राता तथैव च ।
त्रयस्ते नरकं यान्ति दृष्ट्वा कन्यां रजःखलाम् ॥
- (3) प्राप्ते तु द्वादशे वर्षे यः कन्यां न प्रयच्छति ।
मासि मासि रजस्तस्याः पिता पिबति शोणितम् ॥
- (4) यस्मां विवाहयत् कन्यां ब्राह्मणो मदमोहितः ।
असंभाष्यो ह्यपाङ्गेयः स विप्रो वृषलो पतिः ॥
- (5) पितुर्गृहे तु या कन्या रजः पश्यत्य संस्कृता ।
भृण्वत्या पितुस्तस्याः सा कन्या वृषलोऽसृता ॥

English Translation—

(1) Therefore a girl should be married before her attainment of puberty. She should be given over (in marriage) before her attainment of puberty. After that the giver is sinful.

(2) All the three, the mother, the father and the elder brother also go to hell if they happen to see (unmarried) girl during menstruation.

(3) If a father does not hand over (in marriage) his daughter he drinks in each month her menstrual excretion.

(4) A Brahman being deceived by passion marries such a girl no one should talk with him. He is inadmissible in society and that Brahman is the husband of the woman in whom menstruation has commenced.

(5) If a girl attains puberty in her father's house her father is charged with the sin of causing abortion and the girl is called Vrishili (वृषिली)

Owing to the above reasons the law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, is awfully repulsive if a husband is to be punished for cohabitation within the prescribed age limit, although cohabitation has taken place after the attainment of her puberty.

The cohabitation with men other than the husband is never allowed by Hindu religion.

In reality with the exception of a very limited number of educated gentlemen of European ideas, the Hindu people do not like that there should be any law setting an age limit for cohabitation with one's own wife in opposition to the injunctions of the Shastras.

2. (a) Therefore the Age of Consent in the case of wife with her husband should not be limited by law.

(b) The cohabitation with a man other than the husband is diametrically opposed to the Sanatana Hindu Society and hence the punishment in such cases should be very severe and exemplary.

3. In villages crime of rape is not committed, but crime of seduction sometimes takes place; whereas in towns the number of such crimes may be far higher. The law made in 1925 has not succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes.

In my opinion it is not the law limiting Age of Consent that will counteract fornication, but exemplary punishments dealt out to fornicators irrespective of the age of the girls seduced.

4. I am not in a position to give a definite answer to this question.

The idea of keeping the wife separated from her husband by law is in opposition to the Hindu idea of married life. Chastity in women is looked upon from a very different point of view by Hindus from the point of view of the people of modern enlightenment. A Hindu woman has lost her all morally and socially when she has lost her chastity. So the Hindus and their Shastras have always guarded the chastity of the women with greatest zeal. The enjoinder of the marriage of a girl before she attains puberty is meant as a safeguard against her loss of character for a girl will not be tempted to do wrong in this direction before she has had her first menstruation. After the first menstruation the Garbhadhan ceremony is enjoined so that thenceforward she has her husband by her to satisfy all her cravings and to guard her against being misled. Separating the wife from the husband by law after she has attained puberty will amount to counteracting these safeguards of her chastity and the truth of this can be proved by hundreds of examples in practical life of the disastrous results brought about by the absence of these safeguards. And as a husband is forbidden by the Shastras to cohabit with his wife before she has attained puberty the law has only to fall in with the Shastras and mete out punishments to such husbands as may be found to have violated this rule by any disastrous results following from such violence.

5. The usual age at which girls attain puberty is between 12 and 13. But the girls who are of weak constitution and are badly fed and poorly brought up attain it at still later age. It is said in Shashtra that puberty is due to the planet Mars and the moon, which are the masters of blood and mind respectively. (कुजेन्दुद्वयः प्रतिमास मासैवम् ।) In other words menstruation takes place due to the quantity of blood and to thoughts of sexual intercourse entertained by a girl, the latter being often due to the suggestion of it presented to her mind by her mode of life and environment.

6. (a) Cohabitation before puberty is not permissible in our country.

(b) I am not in a position to say more than this on this point.

7. The practice of the early consummation of marriage at puberty is due to religious injunction which ordains a man to practise it, and in default he is said to commit a sin of the most heinous kind. He is also thereby spoiling the important *Sanskara* of the progeny to be born.

The following are the injunctions for cohabitation with one's wife at every menstrual period including the first which is the occasion of performing Garbhadhana ceremony before cohabitation :—

पारस्करगृह्य सूत्रे—का. १. क. ११. सू. ७ “यद्यतुं प्रवेशनम् ।”

(After having married a girl the husband should cohabit with her at the menstrual period.)

गौतमः—“ऋता वृषेयात् सर्वत्र वा प्रतिषिद्धवर्जम् ।”

(A man should cohabit with his wife at every menstrual period and may also do so on other occasions leaving out the forbidden days.

याज्ञवल्क्य—विवाह प्रकरण ३ । ७८ ।

“षोडशतुं निशाः स्त्रीणां तस्मिन् युग्मासु संविधीत् ।

(The menstrual period comprehends sixteen nights from the beginning of the period and one should cohabit with his wife only on the even nights in the period.)

मनु—३ । ४५ ।

“ऋतुकालाभिगामीष्यात् स्वदार निरतः सदा”

(One should cohabit with his wife in the menstrual period and one should always be constant to his wife.)

पराशरः—ऋतौ स्नातान्मु.यो भार्यां सन्निधौ नोपगच्छति ।

घोरायां भ्रूणहत्यायां युज्यते नाचसंशयः ॥”

(If a man does not cohabit with his wife after her bathing in the menstrual period he is undoubtedly guilty of a heinous crime equivalent to the destroying of a child in the womb.)

Etc., etc., etc.

8. The Garbhadhana Sanskara is a necessary sanskara just after the first menstruation of a girl. There are some prescribed rites which have to be performed and they are duly performed by all Brahmans in our country. The non-Brahman classes generally do not perform the actual prescribed rites; but they have some popular rites akin to this and this is known to the vulgar as Gaona. Consummation of marriage as has already been stated does not take place before the performance of these rites and therefore before first menstruation.

9. The attainment of puberty is a sure and sufficient indication of physical maturity to justify consummation of marriage for religious purpose to produce a child with the exception of the cases of such girls as may be suffering from any bad constitutional or organic disease.

10. A girl is supposed to be competent enough to give consent to her husband to cohabitation after the attainment of puberty. In cases of others than the husband the consent of the girl is of no value in Hindu social life for it does not in any way lessen the offence of the man who seduces her. Only when the man pollutes a woman by force he is held to be more guilty.

11. No, I have not come across with cases in which cohabitation before puberty, or after puberty have resulted in injury to her health or to that of her progeny.

12. No.

13. I am not in a position to answer this question.

14. Yes, women favour consummation of marriage for children just after the attainment of puberty.

15. I do not know.

16. This question has already been answered.

17. Certainly. For in marital condition unless there is force employed for cohabitation before the first menstruation with disastrous results there can be no offence at all, while cohabitation itself irrespective of all conditions is an heinous offence when the man is not the husband of the girl concerned. In the former case the punishment proposed in the existing laws if strictly dealt with may prove quite enough.

18. I have nothing more to say on this point.

19. To propose a method would mean to propose a thorough reformation of a whole department. For all criminal laws are generally used by the department to which the apprehension of crime is entrusted as an instrument for extortion. And to make such a proposal one has to study the whole machinery to make himself thoroughly acquainted with all its leakages for which I have no time and leisure.

20. In my part of the country neither of these two measures, I am afraid, will be welcomed by the public as either of them will stand opposing the injunctions of the Hindu religion.

21. Answering from the orthodox Hindu point of view neither the progress of modern education nor the modern reforms made in penal laws has done anything to bring about any real reform in the present degraded moral condition of our society. Every step taken in opposition to the injunctions of the Shastras serves only to undermine the belief of the people in them without proposing to give anything better to replace them with. The so-called reformers themselves realise this but they seem not to care.

**Written Statement, dated the 18th August 1928, of R. S. Munshi
GOPI BEHARI SAHAI, B.A., Deputy Collector, Partabgarh.**

1. The dissatisfaction is not general. Of course among the educated classes and those who are given to think more there is a feeling that the present Age of Consent is low and should be raised.

2. (1) I think that the Age of Consent is low and should not be retained.

(2) I think an advance be made on the present law by two years.

My reasons for so doing are that it will check early marriages and seduction of too young girls. The mental and rational faculties of the girls of this country where illiteracy prevails are not sufficiently developed and matured at the age of 13 or 14 years to enable them to arrive at any sound or reasonable conclusion as regards sexual intercourse and its consequences. Girls of 13 or 14 years and boys of 16 do not attain full physical maturity for sexual intercourse, and if they indulge in intercourse they suffer in body and mind themselves and lead to producing weak, unhealthy and short-lived children and progeny degenerates.

3. I think crimes of seduction and rape are frequent in my part of the country. The amendment of 1925 has not been much effective in protecting girls as the change is so slight that it cannot be felt or realized by the general public which is very backward in education.

Legislation fixing the minimum age of marriage would make the law more effective.

4. My answer to this question is in the negative—the change in revising the Age of Consent was very slight—this would not be felt by the general public on account of backwardness in education.

5. Girls in this part of the country usually attain puberty at the age of 14. It differs a bit in different castes and classes. Girls of well-to-do attain puberty little earlier.

6. Yes. It is common among Brahmans and certain low caste people such as Kurmis, Kahars, Ahirs, etc., where child girls are married to aged men.

Such cases come to Court very seldom. I would attribute the practice to want of education which keeps people in the dark as to the grave consequences of it. In some cases I would attribute it to poverty also.

7. There was a time when people thought it was irreligious to marry girls after they have had menses. I am not aware of any religious injunction on the point prevailing at the present age.

8. Gaona ceremony is usually performed in my part of the country. It sometimes coincides and is sometimes anterior to the consummation of the marriage. It is performed sometimes before and sometimes a year or two after the attainment of puberty.

9. I think the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. Consummation should in my opinion be postponed for 2 years after the attainment of puberty for the sake of the health of the girl and progeny.

10. 16 years I think.

11. I know of three such cases. In 2 cases cohabitation before puberty and in one case immediately after puberty the girls had introversion and retroversion and gave birth to children who died before or immediately after birth—girls have constant uterine troubles and do not keep good health, age of two was 14 and of one 15.

12. My answer to this question is in the affirmative.

13. The educated classes are strongly of opinion that the amendment of 1925 is inadequate and desire the Age of Consent to be raised higher. This number is smaller as a large number is still uneducated.

14. The backward and illiterate families only.

15. Medical evidence is the only source of determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code—it is sometimes doubtful and inaccurate.

I think some measures like people obtaining a certificate of birth from Municipality or Magistrate may be made compulsory. In villages such certificates may be given by the local panchayets or other similar bodies.

16. I do not think it will be appreciably reduced till the Age of Consent is not raised to 16 years.

17. In my opinion extra-marital and marital offences should be classed separately. Punishment of each as now prescribed is enough.

18. Trial of marital offences should in my opinion take place in camera.

19. Against collusion to protect offences a punishment of fine according to means of persons concerned would do. Against improper prosecutions and extortions severe punishments with rigorous imprisonment would be adequate.

20. I think legislation fixing the minimum age of marriage would be in consonance with public opinion in this part of the country.

21. Penal law should in my opinion be strengthened to secure the object in view. Social reform would take a very very long time to root out the evil.

Written Statement, dated the 28th August 1928, of Mr. N. D. PANT, B.Sc., LL.B., Pleader, Deoria (Gorakhpore).

1. The people, as a rule are indifferent.

2. The age of consent at present is too low. It is necessary to raise the age of consent to protect the young girls from early maternity, and seduction for immoral purposes.

3. Crime of seduction of girls is not uncommon here. As the girls seduced are generally above 14 years, the present law can hardly make any difference. The only remedy lies in raising the age at least to 16 years if not to 18 years. The raising of the age limit to 18 years will also prevent the numbers of girls being brought up for immoral purposes, as the girls chosen to lead a life of shame are generally from 14 to 18 years of age.

4. The amendment of the law has hardly produced any change, as it is very difficult to know about such cases. A sense of delicacy and honour of the family will always prevent such offences from being brought to book. If there has been any change in the age of marriage or consummation, it is due, not to the amendment of the law, but to the general awakening of the classes and masses to the dangers attendant upon early marriage, and early consummation.

5, 6 & 8. See the memorandum.

7. Religion certainly does not order immediate consummation after marriage. Amongst certain class of Brahmans marriage of the girl must take place before she attains puberty, but there is no injunction to the effect that it should be consummated within a certain time, though there is a *custom* (based on certain sutras of Karmkānda) amongst certain Brahmans here that the marriage should be consummated within the 1st, or 3rd, or 5th, 7th year of marriage. But it does not prescribe any penalty for its breach except of course that it is postponed for another two years as explained above.

9. Attainment of puberty is no criterion of the full development of girls. The age of puberty depends to a large extent upon the climate and environments in which a girl lives. The usual age here is 12-13 years, while in the hill districts of Almora and Nainital it is 13-14. I also know of some cases in which it is postponed even to 19 years, such instances are not very uncommon in the cooler districts. A girl usually takes 16 years to become fully mature, and puberty cannot be a sign of full physical development. I would fix 16 as the age most suited for consummation.

10. In my opinion a girl of 16 years is fully competent to give an intelligent consent to cohabitation with a due realisation of its consequences.

11. Yes, I have been told of at least one case where cohabitation with a girl before she attained full physical development led to permanent injury to the pelvic girdle, and the displacement of the womb. There are many instances where early consummation has caused tuberculosis in girls.

12. Early marriage and early consummation are not only responsible for high maternal and infantile mortality, but also for the gradual deterioration of our nation physically and intellectually.

13. Public opinion on the age of consent has only developed among educated men and women,—the latter particularly.

14. Women of the villages favour consummation after puberty. In fact that is the only criterion amongst them for the full development of the girls.

15. This is a very difficult question to answer. In fact no two doctors would themselves agree as to their opinion about the age of any girl or a boy. It is only in the young that the age can be determined with any amount of certainty. In the girls above 12 years, the conclusions derived by the presence of teeth, pubic hair, and breast—development can only be a matter of opinion. No hard and fast rule can be laid down for the correct determination of the age. No doubt the X-Ray examination for the ossification of the bones would be much better, but

none-the-less, very expensive method. In the interest of justice, and in all fairness to the accused I would strongly suggest this method particularly when the difference of one year in the age of the girl would change the nature of the offence. The doctors' conclusions at best are (with due apologies) very liable to be incorrect. I would also suggest that the government should keep a closer watch on the birth registers, so that we may get really correct, and not fictitious entries (which are not quite uncommon at present) for the criminal as well as the civil courts.

16. The margin of error in the determination of age of the girls would be very much reduced if the ages of consent are fixed at 14 and 16 years within and without the marital states respectively, and more frequent recourse is had to the X-Ray examination. I am giving below how X-Ray examination can prove to be of immense help in such cases.

- (a) The presence of the pisiform bone is a strong piece of evidence that the girl is over 12 years of age.
- (b) The external condyle of the humerus appear on the 13th or the 14th year.
- (c) The head the humerus usually appears from 13th to 15th year.
- (d) At 14 years after birth points of ossification appear in neck and lesser trochanter of femur.
- (e) The centre of acromion, and the border and the lower angle of the scapula appear between the ages of 14-16.
- (f) At 15 years points of ossification appear in the inferior angle of scapula and body union occurs in the last 4 sacral vertebrae coracoid, and the body of scapula.
- (g) The epiphysis at the knee joint unite at the 16th year.
- (h) The olecranon appears at the 16th year.

From the observations carried out under the X-Rays ((a) to (f) for the age of 14 years and (c) to (h) for 16 years), aided by the examination of the external parts, it is clear that it will become comparatively much easier and accurate to fix the age of any boy or girl. As I have pointed out an effort should be made to ensure the accuracy of the entry in the birth registers. It will also appear from above that a child takes 16 to 19 years for the full development of the bones in the body.

17. I am in complete accord with the amendments as regards punishment as suggested by Sir Hari Singh's Bill.

18. Yes. The procedure of trials to be followed in the case of offences within the marital state must be different from that followed in other cases, as otherwise in the words of Sir Andrew Scoble, it would involve the intrusion of the police "into the domestic sanctity of the Hindu household". Such offences should only be investigated by a Deputy Magistrate, or a police officer not below the rank of Deputy Superintendent of Police, and the committal and the trial of offences should take place in camera, and the newspapers should be prohibited from publishing the reports.

19. If my recommendation for safeguarding against unnecessary publicity are accepted, I would strongly advise the stiffening of the law as regards those colluding to protect the offender.

20. In these districts fixing the minimum age for marriage is more likely to be effective. But this will arouse a storm of opposition from Kumaon, and other orthodox districts where Brahminical influence still holds its sway. There the girl must be married in pre-menstrual period. But even the communities would not oppose the fixation of particular age for the consummation of marriage. I find amongst them also the marriageable age has gone up from 8 and 9 years to 12 and 13 years. So that in course of time I am sure the barrier of puberty will not operate and marriages will take place when the girls attain full physical development.

21. I would not rely on the strengthening of the Penal Laws alone. The masses should be made fully conscious of the infinite dangers to which our nation is open on account of the evil of early marriage and early consummation by means of extensive propaganda carried amongst them.

Written Statement, dated the 9th August 1928, of B. GOVIND SWARUP MATHUR, Sessions and Subordinate Judge, Mirzapur.

There is dissatisfaction with the present provisions of law among the educated classes, educated men and women both see with disfavour the consummation of marriage before the age of 14 in the case of girls and before 17 or 18 in the case of boys. In many castes, marriage of girls generally does not take place before 14 or 15. I belong to Mathur Kayasth community and in my community marriage of a girl before 15 or 16 and of a boy before 18 or 19 is now a rarity. Unmarried girls of the age of 18 or 20 in respectable members of the community can be found in numbers and no notice is taken of such things by the other members of the community.

Among the communities in which "Qarardad" (dowry) system is obtainable girls attain the age of 17 or 18 simply because the suitable husbands are not found and when found exorbitant demands of dowry on the side of the bridegroom make it impossible for the parents of the girl to accept the match. While there is a volume of dissatisfaction among the classes who can think for themselves and for the future of the community, while the bias which existed 25 years ago in favour of the early marriage and prejudice against marriages after puberty are dying out.

2. Either India and the races residing therein should advance with the times or they should go further on the path of degradation and deterioration. No community can progress with the times unless it provides and insists for the education of her girls who would become the future mothers of the race. If it is once conceded that female education is necessary for the uplift of the community and the race, it cannot be gainsaid that the girls cannot be kept in *pardah* to the extent to which they were forced in the past. Muslim countries like Turkey and Afghanistan have realised the necessity and the advanced Turkey has done away with *Pardah* by legislation. The other great obstacle in the education of the girls is the early marriage which leads to early motherhood. If once it is accepted that education of girls is the *sine qua non* of the progress of the nation, it becomes the duty of the State to protect the girls during the educational period from the attack of the outsiders as well as from the follies of her so called well wishers (may they be her parents and husband) follies based upon old and dead customs and traditions, which are sapping the vitality of the further race. A girl requires greatest care and protection between the ages of 14 and 18. It is the time when she begins to bloom in her youth and naturally is most attractive. I leave aside the question of consent within the marital state, but I do not see any earthly reason why she should not be protected from the snares of a man who treacherously allures her for a moment's enjoyment, robs her of her best jewel and leaves her for ever to lead a life of sorrow and shame. It not only blights the life of the girl, the whole family and near relations are affected thereby and it sometimes ends in murder or suicide. Is such a wretch, who causes so much misery, entitled to any protection from law? The only answer can be in the negative. I had several talks with very orthodox people and though they disfavoured the raising of consent age in the case of husband and wife, they enthusiastically support the raising of consent in the case of a stranger.

A girl of 16 or 17 when she is suddenly attacked by a man loses her wits and sometimes does not realise the situation before the whole affair is over, sometimes she abstains from raising alarm as it would bring degradation upon her and her family and so the culprit escapes scot free. In India a girl of 16 or 17 is generally not fit to determine what is good and what is injurious for her in such matters and in my opinion there is absolute need for making a substantial advance on the present law.

3 and 10. The crime of rape is not uncommon in the United Provinces and the raising of the age to 14 years has not succeeded in preventing or reducing the cases. In many cases which came before me as a judicial officer it was medically difficult to ascertain definitely whether the girl was 14 or 15, if the girl was nearly of that age the medical evidence is always indefinite in such cases unless the girl happens to be of poor constitution or much below fourteen. In one case which I tried at Bijoor one officiating Civil Surgeon was of opinion that the girl was not less than 18 while another Civil Surgeon was of opinion that she was below 14. To make the law effective I would raise the age of consent in case of other persons than the husband to 18. If this is done a man would think twice before he takes the honour of a girl and in most cases the plea of consent would not find place. In ninety per cent. of rape cases the woman is below 18 and it is very seldom that a grown up woman figures as a complainant in a rape case. It may be said that a girl of the age of 17 or 18 is competent to give an intelligent consent to cohabitation and can realize the consequences of her action. I differ from this opinion. The majority of the girls are brought up in ignorance. They have no education and no self reliance. A Christian or a Parsi young girl can travel alone in railway and go for marketing in big towns like Bombay and Calcutta but a Hindu or a Mohammadan girl cannot go alone from one house to another unless she is escorted by a male. What to say of travelling by rail or going for purchases in the market. No "Badmash" would dare to pass remarks on an English girl while going on a public road, but when a girl who has got no education is seen alone advantage is taken of her helplessness. In higher castes girls have an innate sense of protecting their chastity and would try to repulse their seducer but they are not sufficiently mentally developed till they are about 17 or 18 to intelligently realise the consequences of their consenting to the amorous overtures of the seducer. I think till the time that education is well advanced among girls and they have acquired some self-reliance the consent age must be pretty high in case of strangers. I go so far as to say that they should be protected against themselves.

4—9. Cases of husbands' cohabiting with their child wives below 13 seldom see the light of the day. The poor girl is helpless, the traditions of the country and the shameful nature of the matter force her to remain silent. The relations are interested to keep quiet, the neighbours are afraid to pick up quarrels with their neighbours and the matter is hushed up. During my 28 years' experience at the bar and bench I never come across such a case. In good families and generally in high caste Hindus marriage is performed at the age of 12-14 and then the girls wait at the house of the parents for "gaona" from 1-3 years according to the age of the girl. It is very seldom that a girl is allowed to cohabit with her husband before 15. Among educated people marriage is not performed before the age of 15 and maidens of the age of 18 or 19 are not uncommon. The girls attain puberty naturally at the age of 13 or 13½ if by puberty is meant flow of menses. It does not depend on caste, but on the nature of diet a girl gets and on general constitution and health.

Cohabitation before 13 is not common among any class of people, but in cases where young girls are married to persons about the age of 20 or 25 and the girl is allowed to live with the husband, the consummation takes place before 13.

Early consummation of marriage is not authorised by any religious injunction though, early marriage is supported on the authority of Smirti. I give in the accompanied appendix the Sanskrit authority for early marriage and also the Sanskrit authority of vadic books for time when the husband should search for his wife to raise a child of her.

In this part of the country girls are detained for " gaona " up to the age of 14 or 15 and thus the ceremony is performed after sometimes, say a year, after the attainment of puberty.

13. Yes, there has been further development of public opinion. In the case of extra-marital case people think that the age may be fixed at 17 or 18. The educated classes are in its favour and those who may be called conservative and do not bother with such questions of reform, agree to extension of the age in case of extra-marital cases. As regards marital case the educated classes are in favour of raising the age, but the majority of the people does not approve of the measure. They admit that girls in good families do not go to their husbands before they complete the age of 14 but any legislature on the point is nausea to them.

14. Not now, there has been much improvement on this point within last 15 years. It is due to some extent to economic causes.

15. Yes, much difficulty is experienced in ascertaining the age of the girls in rape and abduction cases. Indians do not keep authentic records, medical evidence is not definite and Birth registers are not available in rural areas. The only way to get better evidence of age is to preserve the public record in the birth registers. I propose that birth registers should show the date of birth of a child and better agency should be employed in preparing these registers. The copies of such registers should be made available in evidence in judicial cases and there should be a presumption of law that the date given in such registers is correct unless the contrary is proved. Such registers should be preserved for not less than 20 years.

17. I would like to see the marital and extra-marital offences put under different heads. It should be borne in mind that punishing a husband in many cases may eventually mean to punish the wife and sometimes the whole family. The offence of cohabiting with child wives is not very common and it does not require the same punishment which is required in the case of a stranger. I would never like to keep a husband away from his wife for the whole life or for ten years after she becomes a woman, it would be hard upon the wife herself. I would never allow a longer sentence than that of five years for an offence committed by the husband against the wife and therefore, I propose 5 years as the maximum punishment for the husband. It may be two years when the girl is above 13. The imprisonment may be of either description with or without fine.

18. In my opinion the procedure in extra-marital cases should remain the same as it is now, while in marital cases except when the girl is below 11 years warrant may be issued, in other cases summons should be issued before arrest and all the marital cases be triable by a first class Magistrate, with an option to the accused to take the case to the sessions.

20—21. The fixing of minimum age apparently would be more effective while fixing higher age of consent would be practically abortive. If by public opinion is meant the opinion of persons who are not competent to form an opinion and who do not want to budge an inch in the matters of social reform then none of the two measures can be in consonance with public opinion. As regards the minority of thoughtful men who want to see their country advanced either measure or say both would be acceptable. Rather they would prefer both to see the reform successful. Social reform and propaganda are useful things in their own way and a time would never come when their utility would not be felt. If national vices which sap the vitality of the nation are left to be taken care of by social reform

and propaganda then, Governments are futile and legislative councils waste of public money and energy.

श्लोकः—

- १—अष्टवर्षाभवेकौरो, नव वर्षा च रोहिणी
दश वर्षा भवेत्कन्या, अत ऊर्ध्वं रजस्वला ॥ १ ॥
- २—माता चैव पिता चैव जेष्ठभ्राता तथैव च
त्रयस्ते नरकं यान्ति दृष्ट्वा कन्या रजस्वलाम् ॥ २ ॥
- ए दोनों श्लोक पराशर स्मृति के हैं तथा शीघ्रविध के हैं ॥
- ३—पंच विंशतितो वर्षे, पुमान्मारीतु षोडशे
समत्वा गत वीर्यो तौ, जानीयात्कुशलोभिषकं ॥ ३ ॥
- सुश्रुत सं० स्थान ३५ वा अध्या० १० वा श्लोक
- श्लोकः—

- ४—ऊन षोडश वर्षा यास प्राप्तः पंच विंशतिम्
यद्याधत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते ॥
जातोवान चिरंजीवे ज्योवेद्वादुर्वलेन्द्रियः
तस्मादत्यन्तं बालायां गर्भाधानं न कारयेत् ॥ ४ ॥
- यह सुश्रुत संहिता वैद्य के शरीर स्थान के १० वें अध्याय का ४७ वां
तथा ४८ वां श्लोक है ॥

Written Statement of Mr. MISREE LALL, Raidani, Raidani Palace, Mirzapur.

In reply to your enquiry I beg to inform you that the Members of our community (Jain) at Mirzapur in a meeting have resolved that marriages under 16 years of age of the bridegroom and under 12 years of the bride should be held invalid. Above the limits of those ages persons should be free to enter into marital relationships, and they should also be free to have their marital intercourse.

Written Statement, dated the 14th August 1928, of Mr. HARI HAR PRASAD, Sessions and Subordinate Judge, Civil Court, Jaunpore.

1. Under Section 375, Indian Penal Code, sexual intercourse amounts to rape if the woman ravished is under 14 years of age generally and under 13 years of age if she is the wife. This is so whether the intercourse is with or without the consent of the woman. I have not come across any case of rape by a husband upon his wife. The reason is plain. The offender

and the victim being members of the same family and the act being one of seclusion does not see the light of the day. Ordinarily this provision of the law is not of much value but it would be of considerable usefulness in cases where an aged husband marries a minor girl. Such instances of disparity in ages are not uncommon. The only difficulty in the practical utility of this provision in the law would be that the offence would remain unnoticed for the reason given above. I would therefore suggest that marriages of girls below 15 to men above 25 should be made penal by codification.

As to the age of women generally I would prefer the age of 16 to that of 14 as at present. Girls of the age of 14 are of immature understanding and my experience is that their consents are obtained by fraud or improper persuasion and such girls require the protection of the law.

2. The answer to this question is covered by the answer to question No. 1.

3. Crimes of rape are not frequent but those of seduction are numerous. In majority of such cases it is young widows who are the victims. The amendment of the Law in 1925 did not carry the matter far. The delicate period of the age begins at 14 where the Law ends. If the Law is to be at all effective the age should be raised from 14 to 18. Girls at the age of 18 attain a fair amount of discretion and can be left to take care of themselves.

4. I have said above that I have not come across any case of cohabitation by a husband with wife below 13. I have also said why such instances do not come to light. This Provision of the Law will be of importance in cases where aged men sometimes marry minor girls. In my opinion the remedy to this lies as suggested above in making such marriages penal.

5. The usual period at which girls in this part of the country begin to menstruate is at the age of 13 to 14. But this is not the age of her full development. The age of normal puberty would be at 16 or thereafter.

6. Cases of cohabitation before puberty or before the girl completes 13 years are rare. These cases come to light only in cases of rape. Cases of cohabitation soon after puberty are instanced in cases of early marriages. They do not come to courts as they are due to the practice prevailing in the country.

7. As far as I know there is no religious injunctions to which the practice of early consummation of marriage before or at puberty can be attributed.

8. Garbhadan ceremony is almost unknown in this part of the country. The Gaona ceremony is usually performed in cases where the married couple is too young for consummation at the time of the marriage. In the majority of cases the Gaona ceremony takes place after the attainment of puberty. There are some instances in which the Gaona ceremony is performed before the attainment of puberty, but generally consummation does not take place before puberty.

9. No hard and fast age limit can be prescribed for consummation of marriage, because it depends to a great extent upon the physical development of the girl. In cases of normal development the minimum age for consummation without injury to her own health and that of her progeny would in my opinion be 16.

10. In cases of husband and wife 16 years would be a fit and proper age but in other cases I would like to raise it to 18. The age of majority in all civil transactions is 18 except in cases of wards of courts and I do not see any reason why this protection should not be given to girls who are seduced by men of vicious habits by fraud and other temptations.

11. I know one instances in which a girl was married at the age of about 14 but was not physically developed for consummation. She gave birth to a child but soon got Phthisis and expired.

12. This question is one of pure medical science. The semen is like a seed and the womb is the soil on which it is sown. Any weakness in the

seed or the soil is bound to affect adversely the crop raised in the field. Early consummation means that either of the couple or both is deficient and the product out of these two will not be of normal health. The drain on the mother in the product of the child is bound to affect the health of the mother.

It is equally clear that a progeny of weak health cannot develop full normal intellectual activities. A sound mind goes with a sound body. In the long run it is therefore bound to affect the intellectual and physical progress of the nation.

13. The period between 1925 and this day is too small to say whether there has been any further development of public opinion in favour of an extension of the age of consent. But it is clear that every day the development is in favour of the extension of the age in all classes literate or illiterate.

14. The answer is in the negative.

15. In criminal cases generally it is the medical opinion which is relied upon in fixing the age of the girl. That evidence is often supported by the oral testimony of the near relatives of the girl. Copies from registers of birth and horoscope are other pieces of evidence which can be relied upon but they are seldom produced in criminal cases.

16. The difficulty would remain the same in all cases when the question refers to a period verging on the age limit, be it 14 or 16, because the difficulty arises only in such cases and not in others where the margin is sufficient.

• 17—18. I have said above that I have not come across any case of a husband having been prosecuted for rape upon his wife. In my opinion this provision of the Law is almost a dead letter.

19. The answer is in the negative.

20. In my opinion the real and more effective remedy would be legislation fixing the minimum age of marriage. This will cut the very root of the evil and in my opinion the country is prepared on the whole to meet such legislation with approval. The penal legislation fixing a higher age of consent is like a medicine sought to cure a disease created by an early marriage.

21. Considering the slow progress of education and social reform I would prefer to rely on the strengthening of the penal Law. In my opinion the penal Law will aid the progress more effectively and quickly than diffusion of education and social propaganda. History teaches us that the State has led the public by legislation even in social matters. The reason is plain. The number of the intelligentsia is always much smaller in any country than that of the masses. The masses are ignorant people and they have not with clear vision to see things ahead and they are always far behind the times of the day. In such a case it is the clear duty of the State which is the custodian of the welfare of the Raiyats to lead them on the right path. Educating the masses by social propaganda specially in a vast country like India will be a very slow means of achieving the object.

**Written Statement, dated the 11th August 1928, of Kunwar MAHA-
RAJ SINGH SAHIB, C.I.E., Bar.-at-Law, Commissioner,
Benare Division, Benares.**

1. There is no general dissatisfaction. The great majority of people in the United Provinces live in rural areas and are illiterate. They are content to live on old traditional lines and have little or no active desire for change of any kind. Among the educated classes and particularly among those who are interested in social reform there is dissatisfaction with the existing law. !

2. In my opinion an advance on the present law is desirable. Premature cohabitation is a grave evil both from the moral and physical standpoint. Like all evils, even if it is confined to a minority, steps should be taken to remove it. I consider that the age of consent should be raised to sixteen in the case of a stranger in the fifth description in Section 375, Indian Penal Code, and to fourteen in the case of the husband (see exception No. 2 in Section 375).

3. Crimes of seduction and rape are not frequent in this part of the country. On the other hand it is equally true to say that at least five out of ten cases of rape do not come to court in view of the reluctance of the relatives of the girl to disclose her shame in public. I do not consider that the amendment of the law made in 1925 has succeeded in preventing or reducing cases of rape or the improper seduction of girls. Nine out of ten persons in rural areas have probably never heard of the change. Moreover, the Act has been passed too recently to enable any definite opinion to be given on its effect. I consider that one method of making the law more effective is to proclaim it widely in rural areas and to repeat such proclamation from time to time. Exemplary punishments should also be imposed on persons breaking the law.

4. For the reasons given in my answer to 3 I do not think that any practical change has resulted from the amendment of 1925 beyond stimulating public opinion in a right direction. Further the raising of the age from 12 to 13 was too small a change to be effective. In my opinion the law should be changed as noted in my reply to question 2 and the age should be 14 in place of 13 in the case of a husband and sixteen in place of fourteen in the case of a stranger.

5. The usual age is about 12 years. But it varies with individuals and classes. The mode of living, association (*e.g.*, with young married women), food, climate, etc., all make a difference. Generally speaking among the poorer classes the attainment of puberty is later than among the more well-to-do.

6. Cohabitation before puberty is very rare. It does take place, however, in a small minority of cases soon after puberty. It seldom takes place before the girl completes 13 years. Among the lower classes and in particular the working classes in rural areas I should say that cohabitation before 14 was uncommon. Practically no such cases come to court.

7. I doubt if except in rare cases the practice of the early consummation of marriage before or at puberty can be attributed to religious injunction. It is more probably due to the great desire to have a son, for instance, in the case of a man of advanced years marrying a young girl. Sometimes too the father is anxious to get a motherless girl out of his house as early as possible.

8. "Gaona" is usually, though not universally, performed in this part of the country. After "Gaona" there is nearly always consummation. It is almost invariably performed after the age of puberty, though it is difficult to say how soon it takes place after puberty. I should say that it generally takes place two years after puberty.

9. No. I am inclined to think that there should be an interval of at least three years between puberty and consummation. This question, however, can best be answered by doctors.

10. I would say 16 years. A girl of 16 in this country is as intelligent, generally speaking, as a girl of 18 in western countries. On the other hand below this age I am of opinion that she is entitled to the fullest protection against a stranger.

11. I have not come across such cases personally but I have heard of them.

12. I consider that early consummation and early maternity are partly responsible for high maternal and infantile mortality. These early marriages sap intellectual as well as physical vitality. This is one of the reasons why parents of boys at school increasingly desire to postpone marriage until the boy has finished his education.

13. I consider that there has been such development among the educated classes both men and women and particularly among those who are keen on social reform. It is not of course general and cannot be expected to be general in view of the apathy and illiteracy of the great majority of the people. But during my 23 years of Government service I have seen an increasing desire for reform among the educated class in general. And this desire exists among women as well as men.

14. I do not think so except in the case of a small percentage of women who are anxious for pecuniary or other reasons to get a girl off their hands.

15. There have been difficulties in determining the age of girls and they will continue unless and until compulsory registration of births and marriages is introduced. I consider that, even apart from the subject under consideration, such a measure is overdue and should be introduced experimentally in certain areas in each province.

16. I think that there would be some reduction in the margin of error. A difference of two years is obviously more easy to discover than a difference of one year only.

17. I think that there should be such separation, since the nature of the offences is not identical. The penalties at present prescribed are in my opinion adequate.

18. The procedure for trials for offences within the marital state should be in camera. As regards the other cases I am of opinion that they should be in camera if the relations of the girl think this advisable in any particular case. For one thing proceedings in camera will enable parties and their witness to give evidence more readily.

19. I have no suggestions to make.

20. I consider that legislation fixing the minimum age of marriage would be more effective than legislation fixing a higher age of consent. But I think that in view of the state of public opinion in this country the former is at this stage more feasible. There would be great opposition to the latter.

21. In my opinion both a strengthening of the penal law as well as educational propaganda are required. The latter alone is not sufficient. India is a country in which people have to be protected against themselves in certain matters and I consider that there should be legislation against the prevention of early consummation of marriage. Such legislation will not in the beginning be effective but it will have an educative value. Year by year the objection to social reform weakens even among the uneducated classes and I do not consider that even among them there would be great objection to the changes suggested by me.

Extract paragraph 2 of Letter No. 2733/XVII-102, dated May 8, 1928, from the Commissioner, Benares division, to the Secretary to Government, United Provinces, Judl. (Cr.) Department.

2. I consider that the Bill embodies the views of educated Indians as a whole and should be passed into law. Year by year the opposition to measures of this kind weakens. To the best of my knowledge and belief the advance made by Act No. XXIX of 1925, though opposed at the time by sections of conservative opinion, is no longer the subject of criticism. Similarly I am confident that the provisions of the present Bill, if passed into law, will in a short time cease to rouse opposition. It is true that among the uneducated masses as a whole there is little or no desire for a change and that the amendments proposed may in practice remain largely ineffective. Nevertheless the proposed legislation will have an educative value and since the early consummation of marriages is injurious and further since, as was admitted by the Hon'ble Mr. Crearar on behalf of the Government of India, the objects of the Bill are laudable action is required. The legislation recommended by Sir Hari Singh Gour provides one, though by no means the only, form of action.

Written Statement, dated the 14th August 1928, of Mahamahopadhyaya ANNADA CHARAN TARKACHUDAMANI, Benares City.

1. The people do not wait for the statutory age. The consummation of marriage (Garbhadan) is performed on the attainment of puberty and hence there is no dissatisfaction.

2. Further raising of the age would seriously affect the religious susceptibilities of the people and cause widespread dissatisfaction. Making a further advance is not prudent or justifiable.

3. Crimes of seduction or rape not frequent in this part of the country. I do not think the raising of the Age of Consent to 14 years succeeded in preventing or reducing cases of rape outside marital state. Improper seduction of girls might have been affected to certain extent. Prompt action by the police to apprehend the culprits seems to be the only means to stop these offences.

4. I do not think the amendment of 1925 raising the Age of Consent within the marital state to 13 years been effective in protecting married girls against cohabitation with husband within the prescribed age limit (a) by postponing consummation of marriage (b) by stimulating opinion in that direction or (c) by putting off marriage beyond 13.

The religious sentiment of the people requires that the marriage of girls should be performed before puberty and consummation of marriage on the appearance of 1st menstruation. I do not think any steps are required which would interfere with the religious sentiments above referred to.

5. The usual age at which girls attain puberty is 12 to 14. Almost all the girls attain puberty between the age of 13—14.

6. Cohabitation is not common before puberty but it is common after puberty. Cohabitation takes place before the girls complete 13 years if they attain puberty before that age. None of these cases come to Court.

7 and 8. Consummation of marriage at puberty is enjoined by religious injunctions. The Hindu Sastras enjoin certain religious ceremonies called garbhadan on the first happening of puberty. All Hindu sastras refer to this ceremony and its uses and objects are explained in all books. Many ceremonies have to be observed. The husband and wife have to fast and gods have to be worshipped and sraddh has to be performed. The mantras that have to be recited on this occasion conclusively establish the point that garbhadan has to be done on the first menstruation.

I quote one of the mantras from Bhabadeva which are to be recited on the occasion :

"O thou eternal, Sun, thou
Are the creator, the preserver,
And the destroyer of this Universe,
I offer you this oblation on the
First occurrence of menstruation".

There are a number of mantras mentioned by Bhabadeva which all mention "first occurrence of the menstruation".

The Ashwalayan Grihya Parisishta, Chapter I, clearly enjoins that the ceremony has to be performed on the first occurrence of menstruation.

Garbhadan coincides with the consummation of marriage. It has to be done within 16 nights after the 1st menstruation.

Garbhadan is usually performed in this part of the country.

All genuine Hindus observe this ceremony. Its antiquity dates from the oldest times through million of years and through cycles of ages, this practice has been observed in our country continually without any intermission. In all religious books whether they are Vedas, Smritis, Puranas, this ceremony has been emphatically insisted on.

By its omission, one incurs sin and the progeny born of him becomes unholy and corrupted in the eyes of the shastras.

9. The attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. Consummation after puberty does not injure her own health and that of her progeny.

N.B.—"The first menstruation is the usual sign that girl has become capable of conception and child bearing" (Gallabin's Midwifery, page 45). In the most cases the first menstruation is believed to mark the 1st ripening (see Gallabin's Midwifery, page 39). The first appearance of menstruation coincides with the establishment of puberty, and the physical changes that accompany it indicates that the female is capable of conception and child bearing. (The Science and practice of Midwifery by W. S. Playfair, M.D., L.L.D., page 72.)

10. No definite age can be fixed in regard to it. Puberty which varies with physical vigor and development is the only point to be taken into consideration. All girls attaining puberty can give consent to cohabitation.

11. I am a Sanskrit scholar, professor and preceptor, I am in touch with the whole Hindu society of Bengal. I have no such experience that cohabitation after puberty resulted in injury to health or prejudicially affected the progeny, on the other hand.

12. I do not think consummation after puberty can be said to be early consummation. In this connection I would invite the attention of the Committee to pages 10—12 of the pamphlet published by Babu Charu Chandra Mitra, Attorney-at-law (a copy of which is herewith enclosed).

I quote from the Rationable of early marriage system by U. P. Krishnacharya, page 35:—

"Take Madras city itself where the corporation authorities lately published their death rate returns for 1926-27. These figures clearly show that in the most early married community, i.e., the Brahmins, infantile mortality is the lowest."

13. Since the amendment of 1925 I do not think there has been any further development of general opinions in favour of an extension of the Age of Consent (marital or extra-marital).

14. All favour consummation on the attainment of puberty.

15. There has been considerable difficulties in determining the age of girls in connection with offences under Sections 375 and 376 and also under Section 363 of the Indian Penal Code. No doctor can be sure about the age of a girl when there is the difference of a year or so and no two doctors will agree as to the precise age of a girl when the difference of a year or six months is in question. I think the attainment of puberty should determine the Age of Consent. Medical science can easily determine whether a girl has attained puberty or not and extraneous evidence will also be much more reliable if menstruation is fixed as the limit.

16. Nobody whether a medical or a layman can positively swear whether a girl is 13 years six months or 14 years. It is impossible for any jury to rely upon such evidence. The difficulty in determining the age will not be reduced if Age of Consent is raised to 14 years or above.

17. I do not think it is at all necessary if puberty is fixed as the Age of Consent.

18. I would not suggest any difference in procedure of trials if puberty is made the Age of Consent.

19. Not necessary if puberty is made the Age of Consent.

20. I would not prefer any of the alternatives. People consider their religions as sufficient safeguards which enjoins

(1) Marriage before puberty and

(2) Consummation on the attainment of puberty.

21. I am against the codification of any penal law in such matter. The normal evolution in all matters religious and social should not be interfered

with by any legislation. The civil law should not interfere with by the marriage law—marriage being a sacrament with the Hindus.

Written Statement, dated the 9th August 1928, of Mr. N. C. MEHTA, I.C.S., Collector and Magistrate, Azamgarh.

1. The public opinion is indifferent.
2. I shall deal with this as a part of my general note.
3. Cases of seduction are very common but not of rape. The amendment of the law in 1925 has not affected the number of cases of either variety. The legal remedy is already effective but no law can to any great extent affect the prevailing standard of sexual morality observed by the people.
4. The law had practically no effect whatever on the questions raised. The marriages do not take place so early as before principally on account of the growing realisation of the consequences of child-marriages.
5. The general age may be said to be thirteen or fourteen.
6. (1) No.
(2) Yes.
(3) Not as a rule. Such cases do not come before the court.
7. The religious injunction is said to be that of shastras and whatever penalties may have been prescribed by these authorities—which are largely social and religious in their nature, they are no longer operative at present.
8. The word 'Gauna' is not equivalent to or synonymous with 'garbhadan'. The ceremony is generally so arranged that the girl goes to her husband's house at the age of puberty after her marriage or a little later. It generally coincides with the consummation of marriage and takes place generally on the attainment of puberty or a couple of years later, say, at the age of fifteen.
- 9 and 10. This is a question primarily for the decision of scientists and it is of course well known that puberty does not mean either physical or intellectual maturity. The age of eighteen in this country may be suggested as a proper age for consummation of marriage as well as for regarding the woman as mature.
11. This is a question which can be best answered by the hospital records or a detailed statistical investigation of certain groups of people. It is only common sense that cohabitation before puberty or before full physical maturity reacts disastrously on the women and consequently the progeny—if not physically at any rate morally in the case of the latter, for a girl of 11 or 13 is not only unfit to be a mother but even unfit to look after herself, let alone her children.
12. Early consummation and early maternity are responsible for most of the ills of India, and volumes can be written to prove these facts. Briefly they are responsible for the extremely low vitality and stamina and courage of the people, and also for the low position of the women, which is a disgrace to any people calling themselves civilised.
13. Public opinion has been strongly supporting late marriages, as would be expected primarily among educated classes—and even among them according to the quality of their education and the quantum of moral courage possessed by them. Public opinion has been indifferent towards the amendment of the law.
14. The answer may be said to be generally speaking—yes, so far as the bulk of the orthodox women is concerned.
15. Yes. The remedies suggested are compulsory and more accurate registration of births and of marriages.
16. No; for the appearance of a girl from the age of 11 up to 15 or 16 is largely a matter of environment, feeding and social status.

17. No. The penalty should be provided for the offence whether outside the marriage or not. The prescribed punishments at present are sufficient.

18. No; because in my opinion the offences should be regarded as one against the society at large and not against any private system of marriage or any particular individual. In fact the offences committed at present within the marital age are indefinitely more frequent and serious in consequences than those outside the marriage state a few of which come before the Courts.

19. No.

20. The educated public opinion would favour a minimum age for marriage to be fixed by the legislature and such legislation is also likely to be more effective than the enactment of penal laws fixing a higher Age of Consent.

21. In a vast country like ours where people are used to look to the State for initiative and guidance for centuries past, it is incumbent and in fact the first duty of the State to secure the very rudiments of protection to men and women born in this country against the consequences of ignorance, prejudice, superstition and custom—whether at the hands of themselves or at the hands of their guardians. Education and social propaganda are powerless before the organised tyranny of the numerical but ignorant majority. If India is to take her proper place among the civilised peoples of the world, social legislation on a much more extended scale will have to be undertaken comprehensively and urgently.

— A proposal has recently been made by the Education Board of the United Provinces to the effect that no boys should be admitted in the High School who marry after a certain date. A simple rule like this for High Schools and Colleges will be infinitely more effective than merely raising the Age of Consent or making the provisions of the Indian Penal Code more penal. In every sphere of life legislation has to be undertaken to raise the standard of social life as has been done in all the progressive countries of the world. India is probably the only country which has had the least amount of social legislation generally on the ground of the old-fashioned plea of neutrality of the state in matters religious, and unfortunately in this country anything from the use of onion or garlic to the touch of a human being can be included within the sphere of religious observances. We have not even made a beginning to treat women as citizens of the state as any country calling itself civilized must do, if its citizens—men and women are to rise to the full stature of their growth. In a country like India public opinion has to be trained up to follow rather than to precede farseeing legislation in the social sphere.

Written Statement, dated the 15th August 1928, of Mr. M. L. SHARMA, M.A., Kamacha, Benares.

1. Yes, the intelligent and medical people are dissatisfied with the state of law as to the Age of Consent as it exists to-day.

2. (2) An advance on the present law is essential, because the existing law has been found inadequate for suppressing sexual crimes.

3. The crimes of seduction and rape are nowhere rare in our country and they were pretty frequent in my part of the country till 1926, when the state introduced a new legislation, which has indirectly suppressed the crimes. In my state (Kotah, Rajputana), a girl is a minor before 18 so far as the crimes of seduction and rape are concerned.

The amendment of the law made in 1925 has not sufficiently succeeded in preventing or reducing the cases of such crimes.

4. It is impossible to protect married girls against cohabitation with husbands, and the amendment of 1925 has not done it. Personally I think no steps can make the law effective, unless it be an entire and complete

separation soon after the religious rites of marriage are over. But this is rather impossible.

5. It is mostly between 12 and 13 in the capital and other big towns where social conditions are much or less unnatural. Yes, it differs in different classes of society.

6. Yes, till 1926, cohabitation before puberty was quite common, but now the marriage of a girl before 12 has been penalised by law. As I have already said, cohabitation after marriage whether the girl has attained puberty or not cannot be checked either by law or social opinion, and hence it is still common.

7. So far as my knowledge of Hindu religion goes, consummation of marriage before or at puberty is not at all binding. Even the authorities who prescribe it are either minor or allow option.

8. Yes, Gaona is performed not only in my state but all over Rajputana, but the time of its performance has nothing to do with the attainment of puberty and the couple can meet even before it is formally celebrated.

9. No, I don't think that the attainment of puberty is sufficient indication of physical maturity. It is often due to unnatural and exciting environments. I think consummation is not physically justified before a girl is 16.

10. Not before 16.

11. Yes, I know of three cases where girls conceived before 14 when they were not physically well developed, with following results:—

(1) Died during delivery.

(2) Had to be chloroformed and operated upon. Succumbed to it.

(3) The child was still-born.

Written Statement of Mahamahopadhyaya PADMANATH BHATTACHARYYA, Vidyavinod, M.A., Retired Senior Professor of Sanskrit, Cotton College, Gauhati, Assam, (Present Address): 45, House Katora, Benares City, United Provinces.

1. I do not feel competent to answer.

2. Under no circumstance the Age of Consent should be raised. I joined those who emphatically protested against the previous Consent Acts (of 1891 and 1925). The social rules and customs of the Hindus are based on the *shastras* and I should tolerate no interference with them.

3. Crimes of seduction or rape are not frequent in our part of the country—I mean Assam and Bengal. The Amendment of 1925 has not affected the usual state of things in this respect, nor will any future amendment do. Men criminally disposed do not mind the Penal Code: but greater vigilance in the detection of crime and inflicting condign punishment on the perpetrators are what may go a great way to check the crime.

4. The amendment has not been effective as the people obey the injunctions of the *shastras* in cohabiting with their wives on the latter's attaining puberty, i.e., on the first appearance of menstruation, if that occurs within the prohibited age. It is expedient therefore to fix the Age of Consent so as to be coeval with the first appearance of menstruation and not any 'year'. This will be a popular step and will have a moral effect on the people.

5. Girls attain puberty between 11 and 15 and this depends on the physical development of the girl and not on class, caste or community.

6. There are cases of cohabitation before puberty though this is against the injunction of the *shastras*; but all who obey the *shastras* must cohabit with their wives as soon as menstruation occurs, even if it takes place before 13. I know of no case ever coming to Court in this matter.

7. As has already been stated above, early consummation of marriage at (and not before) puberty is due to religious injunction. A Hindu (of course orthodox) will, on the first appearance of menstruation of his wife, perform a religious ceremony—beginning with offerings to God and to forefathers and culminating in cohabiting with the wife solemnly with utterance of *mantras*: failure of performance of this ceremony—called *garbhadan*—is considered sinful: pregnancy without this ceremony is looked on as inauspicious and the progeny as unholy.

8. In our part of the country (Bengal and Assam) the *garbhadan* ceremony is duly performed: only the heterodox might neglect it and they are generally looked on as out-caste. It coincides with the consummation of marriage, and is performed immediately on the attainment of puberty—the first appearance of menstruation.

9. I consider that the attainment of puberty is ordained by nature and so, is a sufficient indication of physical maturity to justify consummation of marriage.

10. The age when puberty is attained should be looked on as rendering a girl fit to give her consent, for obvious reasons.

11. I have not come across any case of injury due to cohabitation before or after puberty.

12. Early consummation occurring after attainment of puberty and early maternity in consequence, cannot be any way injurious. In my humble opinion nothing done at the dictation of nature and the sanction of the holy *shastras*, can be harmful. Maternal and infantile mortality is due to some other causes. The people have been obeying the injunctions of the *shastras* from time immemorial: and that there were no cases of untimely death in the ideal administration of Raja Sri Ramachandra (who himself married early as is well known, Sita was only an infant at the time of her marriage) is chronicled in the *Ramayana*. The mortality referred to, is due to extreme poverty of the people—and to what is this poverty due, is a matter that belongs to the province of politics.

13. Public in our part of the country do not at all care for extension of the Age of Consent: it is the zealous reformers who raise such questions, but their number is small.

14. There are no doubt some fond but unwise women in our society who would allow their sons to sleep with their young wives: but this is certainly a matter not encouraged by the intelligent men as well as women: and, as I have already stated is strictly against the *shastras*.

15—16. Not within my experience.

17. I would only make extra-marital offences punishable under the law: the maximum punishment for such (extra-marital) offences should be 10 years rigorous imprisonment.

18—19. I have no suggestion to make.

20. I would suggest non-interference by law with social matters; the Age of Consent may however be fixed at puberty but to fix a minimum age of marriage would be a direct interference with the social rules based on the holy *shastras* and I should emphatically protest against it.

21. As I would protest against enacting penal laws that might interfere with the injunction of the *shastras* I would only allow the so-called social reformers to carry on their propaganda but they should, on no account, be encouraged to move the legislature to amend social rules and customs based on the holy *shastras*.

Sūtrata and adult marriage.

I have noticed it that the advocates of adult marriage including some of the members of the Age of Consent Committee have been making much of the following extract from Sūtrata:—

जन षोडश वर्षायामप्राप्तः पञ्चविंशतिम् ।

यद्याधस्ते पुमन् गर्भं कुक्षिस्थः स विपद्यते ॥

जातो वा न चिरं जीवेत् जीवेद्वा दुर्वलेन्द्रियः ।

तस्मादत्यन्तवात्स्यायां गर्भाधानं न कारयेत् ॥

Sūtrata Saṃhitā—Śārīra-sthāna, Chapter X, paragraph 43 (Bangabasi Edition).

"Here", say the marriage reformers, "the orthodox Āyurvedic view is that a girl of less than 16 years in age must not be impregnated: *ergo*, the child marriage is prohibited in Āyurveda".

I shall demonstrate here that the assumption as above of the so-called reformers is far from correct by proving that the reading जन षोडश वर्षायाम् (Īnashoḍaśavarshāyam) in the above extract is incorrect—the correct reading must be जन द्वादश वर्षायाम् । (Īnadvaśaśavarshāyam, *i.e.*, 'of less than twelve years in age).

Just in the preceding paragraph (Śārīra-sthāna, X 42), Sūtrata says—

शक्तिमन्तश्चैनं (कुमारं) ज्ञात्वा यथावर्णं विधां ग्राहयेत् । अथास्मै पञ्चविंशति वर्षाय द्वादश वर्षायां पत्नीमावहेत् पितृधर्माय कामप्रजाः गायन्तीति ।

so, here, Sūtrata has prescribed the marriage of a youth of 25 years in age with a girl of 12 years, just as Manu (IX—94) lays down—

त्रिंशद्वर्षी वहेत्कन्यां हृद्यां द्वादशवर्षिकीम् ।

अष्टवर्षाष्टवर्षा वा धर्मे सीदति सत्वरः ॥

Only, Sūtrata evidently has given the maximum age permissible for a girl's marriage—which is also the maximum age prescribed by the great law-giver Manu: rather Sūtrata has given a less age to a male, *viz.*, 25, while Manu has laid down 30. Thus the reformers will see that as regards marriageable age the medical opinion does not at all clash with the opinion of the sastras.

As to consummation of marriage by cohabitation with the wife, Sūtrata strictly follows the Sastras, as he says—

तद् वर्षाद् द्वादशात् काले वर्तमानमष्टक् पुनः

जरापक्वशरीराणां याति पञ्चशतः क्षयम् ॥

युग्मेषु तु पुमान् प्रोक्तो दिवसेष्वन्यथारबला ।

पुष्पकाले शुचिस्तस्मादपत्यार्थी स्त्रियं ब्रजेत्

Śārīra-sthāna III—8 and 9.

i.e., the menstruation time ranges from 12 years to 50 years, and at the time of menstruation, a man desirous of begetting a child should cohabit with his wife, on even days if he desires a male, and on

odd days, if a female child. The view of the sastras is exactly the same—the Vedas command ऋतो भार्यामुपेयात् । (one must cohabit with wife on menstruation), and so says Manu (III—45), ऋतुकालाभिगामीस्नात् meaning the same.

Suśruta has not stated here that a man must wait until the wife attains the age of 16; only he has ordained that both husband and wife must observe Brahmacharya (Cessation from sensuality) for a month:—

ततोऽपराह्णे पुमान् मासं ब्रह्मचारी सर्पिस्त्रिंशः सर्पिंश्चोराभ्या शाल्यो-
दनं भुक्त्वा मासं ब्रह्मचारिणीं तेलस्त्रिंशं तेलमाषोत्तमाहारां नारीमुपेयाद्-
रात्रौ सागादिभिरभित्रिंशस्य विकल्प्यैवं चतुर्थीं षष्ठ्यामष्टम्या दशम्या
द्वादश्याञ्चैवोपेयादिति पुत्रकामः ।

Śarīrasthāna II—28.

From what has been stated above, if, in the extract जन षोडशवर्षायाम् etc., the word जन षोडश would have been correct, and a husband had to wait till the wife completed 16th year of age, then, Suśruta would have been inconsistent as he states (1) that menstruation begins at 12 years, (2) that there should be cohabitation at such a time (i.e., on menstruation of the bride) and (3) that only a month should be awaited—which month should be devoted to restriction of diet in strict Brahmacharya.

And moreover a sage (Rishi) like Suśruta could not have made a statement which is hollow as it never stands on fact and experience: millions of cases of pregnancy have occurred in India and in fact in all the countries in the world where a girl's marriage takes place at an age ranging from 12 to 15—and there have been very few cases of evil consequence as promised by Suśruta: issues of pregnancy before 16 years are found healthy and of long life—and if there have been cases of bad condition, well, such cases are found also where there is late marriage.

In the extract under criticism (जन षोडश वर्षायाम-प्राप्तः पञ्चविंशतिम्)

जन षोडशवर्षायाम् has been qualified by अत्यन्तवालायाम् । i.e. 'very tender in age', *bṛi* = non-adult in age): a girl is called *bṛi* up to 16th year: so a woman of about 16 years in age could not be designated अत्यन्तवाला । as in the extract: so the reading must be जन द्वादशवर्षायाम् । to be rightly qualified by अत्यन्तवालायाम् । (very tender in age).

Again, in the immediately preceding paragraph (already quoted) wherein marriageable age has been prescribed, Suśruta allots to a male aged 25, a wife aged 12 years: in the very next passage i.e., जन षोडशवर्षायाम् । etc.) he retains " 25 " in the case of the male but changes the wife's age to " 16 " which is absurd and therefore an apparent error for 12: when a girl of 12 (married to a youth of 25) attains an age of 16, the youth would be of 29 years of age: so the line, instead of—

जन षोडशवर्षायामप्राप्तः पञ्चविंशतिम् ।

should have been

जन षोडशवर्षायामप्राप्त जन त्रिंशतिम् ।

Hence, I have proposed the reading as

जन द्वादशवर्षायामप्राप्तः पञ्चविंशतिम् ।

i.e., if a girl aged less than 12 becomes impregnated then all these evil consequences (as enumerated in the second and the third line of this extract) would come off.

One might argue here, that as the menstruation time begins according to *Suśruta* (as shewn above) at 12, there is no chance of pregnancy in an unmenstruated girl below 12 years in age, and hence the amendment is meaning-

less. The answer is, that a girl below 12 becomes sometimes **गूढरजस्का ।** of latent puberty, *i.e.*, one whose signs of puberty have not appeared, and such a girl can bear child—but the consequences are often as have been stated in the extract under criticism.

In fact the *Rishi* (*Suśruta*), quite in harmony with the *Sastras*, warns here the lascivious husbands not to cohabit with their wives below 12 (and so unmenstruated) as that would lead to undesirable results.

Again, another question arises: *Suśruta* has prescribed marriage of a girl of 12 years in age, and why should speak of girls below 12 in the next extract? The answer is, as I have already stated at the outset, that this (12) is the *maximum* age prescribed for a girl's marriage; *Suśruta* does not speak of the age-period below 12, as this falls within the province of the *Dharma Śāstras* which recommend marriages of girls of even 8 years of age, *viz.*—

षष्टवर्षा भवेद् गौरी नववर्षा तु रोहिणी ।

Parāśara Saṃhitā VII—6.

Apparently *Suśruta* has no objection to an earlier marriage performed in obedience to the injunctions of the *Dharma Śāstras*; only he has thought it his duty as a medical scientist to warn against cohabitation at an earlier age than the menstruation time, *viz.*, 12 and upwards.

Written Statement, dated the 26th August 1928, of Mr. SRI PRAKASA, B.A., LL.B. (Cantab.), Bar-at-Law, Sevashrama, Benares Cantonment.

I acknowledge with thanks the receipt of your printed circular letter No. 42 without date, as well as No. 242, dated August 17th. I am intending to reply to as many questions as I possibly can from my very limited experience of the subject matter of your enquiry; and then briefly to make some general remarks giving my opinion on the whole question of legislation on such matters. If what I say is found helpful, I shall be glad to appear personally before the Committee and for such assistance as I can in its work. In case the Committee wants to hear my views orally, I should be informed at least two weeks beforehand the date and place at which I am wanted, to enable me to fix up my programme accordingly.

I now come to the questionnaire. The numbers here given at the beginning of paragraphs correspond to the numbers in the printed paper. Before I begin, however, it would be but fair both to Government and to the Committee to mention that my experience is totally limited to such observation as is possible in social life and to the work I have been able to do in connection with the local Seva Samiti of which I was the Secretary for many years and in which I have held other offices and for which I have worked actively for about 12 years now. Despite the apparent length of time, I regret, however, I have never been able to make any personal investigations of cases, and as it is possible most of what I say may be regarded as hearsay and

hence untrustworthy. It is for the Committee to appraise the value of what I say. I only wanted to sound a note of warning lest there should be any misapprehension later on.

1. So far as I know there are very few cases under these sections of the law. The police may occasionally sum up a rape case: but the circumstances are almost impossible to prove, and the social feeling being so much against public exposure, people try to cover up such offences to save the 'honour' of the persons concerned. In such circumstances there cannot be, and, so far as I know there is no dissatisfaction with the state of law, people generally being quite indifferent as to what the Age of Consent is: 12, 14 or 16.

2. As I hope to explain later, I regard any attempts merely to change these particular sections as futile. The problem has to be tackled in other ways, i.e., by the making of other laws and enforcing them stringently even at the cost of unpopularity. Ordinarily I should put 16 as the Age of Consent for a girl in the marital state and 18 if the cohabitation is outside that state. I should penalise all marriages of girls before 16. Though I know the prevalent sentiment regarding marriage of girls before puberty, and though I know you may raise a great deal of opposition if you suggest it, still I feel that this must be done if we want to save our race from the moral and material ruination towards which it is heading. As I have already said, I cannot take the question of the Age of Consent by itself. I must deal with the problem of the age of marriage as well. If marriages (i.e., the ceremonies of marriage) are allowed before the Age of Consent (actual sexual intercourse) the law would not work however necessary it may be. It would be impossible to enforce it, as I am sure has been the case so long; and it would also entail a certain amount of prying about by the executive in the domestic concerns of the citizen, at all hours of the day and night, to which I cannot be a party, and which I should resent myself. I, therefore, feel there should be no time and breath wasted to change this law, unless we are prepared to overhaul the whole of the laws relating to marriages. Social legislation means coercion to get right vindicated against all prejudices. It is an unpopular business besides. The social reformer must face both the difficulty and the unpopularity.

3. I don't think cases of rape, as defined by law, are very common. I mean to say that illicit intercourse is common, but it is by consent of both parties. There is not much violence on girls of tender age, nor are there many opportunities for such girls to give their consent. So far as I know, however, there is a great deal of what may be called 'white slave traffic' carried on undetected in our midst. If I am not very wrong, heaps of young women are sent from this side to the Punjab both for marriage and for immoral purposes. I do not think the change in the law has made any difference because, so far as I know, girls seduced for immoral purposes are above the age of 14 or even 16. Usually they would be widows or women very unhappy in their fathers' families or in the families in which they have been married. But I fear this is a different problem, though an allied one. This has also to be tackled in this connection. I don't think any measures can make the law effective, as it stands. It is bound to remain a dead letter, more or less.

4. The marriageable age of girls has been generally going up because of social and economic pressure among the so-called higher and educated classes. But the great mass of our people are still bound to their ancient methods and prejudices. So while among the 'better' classes—law or no law, there is scarcely any marriage and certainly no cohabitation before the girls are 13, among the humble, the poor and the innumerable classes which are weighed down by custom, there has been, I fear, no improvement at all. Those who know the law and fear it may put off marriages, or postpone consummation as suggested in sub-heads (3) and (1) beyond 13, but there being no public opinion at all on the matter and no attempts on the part of anyone to tackle these difficult and delicate problems—this answers sub-head (2)—the mass remains where it was. There are, I think, plenty of cases among the poor, living hopeless conditions of homelife, where there is sexual connection in

the married state between the ages of 11 and 13, before puberty. The law, so far as I know, has been powerless to prevent this. The only step that I can recommend is to raise the age of marriages itself. I can think of no other means of preventing all this wrong.

5. So far as I know the usual age of attaining puberty in the case of girls, is about 13 or 14. I believe girls of humbler classes attain puberty earlier as they come to know of sex matters and even cohabit earlier than this age.

6. (1) Cohabitation is not very common, so far as I know before puberty. But there is a certain amount of it among all classes, and a great deal of it among the agricultural and manual working classes—(2) cohabitation, when married, after puberty is the general rule. (3) The answer to this I believe is included in the earlier statements.

7. The marriage ceremony before puberty is due to religious injunction wherever it exists. Sentiment in its favour is very strong still, though, as I have said before, other factors are operating against this among certain classes. Consummation, however, is not due to any religious injunction. It takes place because of the comparative freedom from any idea of wrong doing, existing in the minds of the young couple, which enables them to satisfy curiosity without any danger of stigma. Then there are young women—relatives in joint families who intrigue to get young folk together out of amusement: and the young people fall willing victims in their hands. There is, so far as I know, absolutely no injunction for such consummation and hence no penalty for its breach.

8. 'Gaona' is a common ceremony in this part of the country, translated as 'second marriage' by persons anxious to enrich the English language! The marriage having been performed before the puberty of the girl, this is performed soon after puberty; and as a general rule, consummation takes place immediately afterwards. Sometimes as many as three years elapse between marriage and *Gaona*. If it is a post-puberty marriage, the *Gaona* ceremony is either dispensed with or performed along with the marriage. A difference of one year between the two ceremonies is very common.

9. I don't think puberty is a sufficient indication of physical maturity to justify consummation specially because maternity may immediately follow. I am, of course, not a doctor: still as a layman and a citizen, I think at least three years should elapse between puberty and consummation for a girl. If it is 5, it would be still better, but I should be satisfied if it is 3, and so shall be further satisfied if no marriage is allowed before the age of 16 for a girl. This should help us to rear a vigorous race.

10. I think 16 in the marital state, and 18 in all other cases.

11. It is difficult to answer this question; but there are many relatives of mine who, I think, have not grown to their full stature or become prematurely old, because of early marriages, resulting in early responsibility—and early motherhood. I have, I fear, no sufficient grounds to say whether cohabitation in such cases occurred before puberty or not. I fear this is an unsatisfactory answer, but I cannot say more for want of definite knowledge.

12. I most definitely think that early maternity is responsible for a lot of trouble. If the question of maternity were not there, perhaps cohabitation by itself once puberty has been attained, would not be so harmful. High maternal and infantile mortality are, to my mind, inevitable when girls are mothers before they know what it is to have a child and how a child should be taken care of: when child after child arrives in quick succession, and the economic position of the household is anything but satisfactory. Such children are bound to be weaklings and absolutely worthless for the battle of life either intellectually or physically. I am talking of the general situation. There may be exceptions but they prove nothing.

13. There are unfortunately very few people who are interested in such matters. There is, so far as I know, no thinking even on such problems, hence no public opinion worth the name. The people have yet to be taught to approach such subjects in a spirit of sympathy, of enquiry and of reverence.

Good men should approach it. Any vulgar people deal with it and that they do in the spirit of ridicule, hilarity and sarcasm. So long as this exists, nothing is possible. If only medical practitioners would have the public spirit to deliver quiet lectures from time to time in suitable places and invite persons to listen to them, they would be doing a great deal of good.

14. So far as I know, women generally are only anxious to have the marriage ceremonies performed before the girl attains puberty. They try to put off consummation as far as possible themselves, and I have known of cases of unequal marriages, where women have taken special steps to protect the young married girls from the attentions of their grown-up husbands. As a rule they are not very successful and so they bow to the inevitable.

15. I fear I cannot answer this question for though a barrister, I have never practised. The question can best be answered by persons who have dealt with such cases—magistrates, judges and criminal lawyers. I am sure the Committee is consulting them.

16. I fear this question is also beyond me.

17. I should certainly have two classes, punishing marital offences less severely than extra-marital ones. In my scheme there would be no marital offences. I find it impossible to suggest the nature of punishment, as I have my own views on both the causes of crime and the methods of dealing with them. Plunging in that vast subject would be irrelevant as it would go beyond the duties of the Committee. But the Committee when recommending punishment, should remember that a man committing an offence like this would be of a very sexual nature. If he is so, what good can we do to him by imprisoning him, for long or short periods during which he is completely deprived of any legitimate sexual satisfaction, and in which he may become a dangerous pervert. A study of physics—analysis is essential before recommending punishment. If the Committee is interested in this matter, I should like to defer to a future occasion any elaboration of my views on the subject.

18. The Committee will please excuse my inability to answer this question, as I am not competent to advise on matters of legal procedure. I should however, recommend *in camera* proceedings in all such cases, to protect girls from improper exposure and to elicit all possible facts as well. I should also constitute special courts consisting of men and women—ordinary householders—to try such offences. Both sorts of cases if there should be two sorts, may be brought before this tribunal, even if the procedure is different.

19. I fear I cannot add anything to what I have said in paragraph 18 above.

20. I personally favour the fixing of a minimum age for marriage. I regard, as I have said before the mere fixing of a higher Age of Consent for marital cases, as futile, when marriages are permitted to be performed. Such laws are bound to be dead letters more or less, unless someone is maliciously inclined towards someone else and is anxious to expose that other for causes very different to sexual offences. So far as public opinion is concerned, I have said it is indifferent. Generally people would like that there should be no law at all on such matters. According to them social custom and stigmas attaching to offences should be regarded as sufficient both to regulate sexual relations and to punish any transgression. Public opinion has to be created and not followed in this matter. I may add, however, that, though not vocal, there is a definite and growing class wanting reform.

21. I regard social legislation as a most important factor in social reform. Mere education and social propaganda would not do, important as they are. Even advanced communities cannot do without social legislation. Examples of Russia and Turkey show what can be done by social legislation. I definitely want law, which is also strictly enforced, to regulate the age of marriage. And I shall proceed now to give my general views briefly, as I preshadowed in the beginning, after giving such replies as I could, *seriatim*, to the Committee's questions.

It is worse than useless to legislate merely on the Age of Consent when marriages are permitted to be performed at any age. The problem has to be

tackled at the root. All marriages before the age of 16 for girls should be prohibited. It should be made a penal offence for parents to marry their daughters before that age. No girl should be allowed to give herself away in marriage either by any sort of ceremony whatsoever before that age. If we regard this as a desirable aim, we must have stringent legislation to that effect. Then alone can consummation before that age become impossible, even in the marital state. The sentiment regarding pre-puberty marriages has to be over-ridden by penal laws as an effective help to general social propaganda and education. To ensure doing what we want to do, we should have, again by legislation, an effective system of birth certificates. The present system of municipal certificates without actual means of identification, is not effective. All legitimate children should have the names and ages of both parents mentioned on this certificate, in other cases also, as far as possible. The mother's age should be given. Then there should be a system of licensing all those who have the right to act as priests or otherwise officiate at marriage. They should be required to keep a full record of all marriages they perform. The grant of licenses should be an easy process. In communities where there may be no regular priests, it should be the parents or guardians' imperative duty to give all the information that the priest would otherwise be required to do. All marriages must be registered and a proper certificate of marriage taken. When we have all these three things—birth certificates, licensed priests and marriages certificates—we can be more or less assured, humanly speaking, that no marriages are performed before the age of 16. There should be no further prying as to whether cohabitation takes place immediately after or not. This should be allowed as soon as the marriage has been performed.

Outside the marital state, the Age of Consent for girls should be 18. In the married state, there is, after all, some one who is responsible for any result of cohabitation, who would, in all likelihood, take care of the girl. Outside marriage, a mature age is necessary, as the results of cohabitation are likely to react wholly on the girl. The age of 18 years seems to me to be reasonable. It would be wise legislation to provide for this, for human society and human nature being what they are, we must expect such things in the world. We can only regulate, we cannot abolish all that we regard as evil from life. This hasty and lengthy letter, I must offer my apologies for what may perhaps appear as useless or unhelpful to the Committee and for occasional repetitions. I am sorry for this length. I had never expected that my reply would be so long when I started.

**Written Statement, dated the 30th August 1928, of Khan Sahib
MIRZA MOHAMMAD HUSSAIN ALI KHAN SAHIB, Deputy
Collector, Jaunpore.**

1. Yes, there is. The general opinion of the society is that the age under section 375, Indian Penal Code, should be raised to 16 years. I strongly favour this change inasmuch as I have had a long experience of pitiable rape cases which could not be brought to book because of this deficiency in the provision of law. The crime is one that ought to be checked with an iron hand and in my opinion raising of the age to 16 years would go to serve the purpose to a very great extent. It may also be noted that a girl of 16 years or more is generally strong enough intellectually to use her own mind freely, which is probably not the case with girls of lesser age, barring, of course, a few exceptions. But the law is to be for the good of the generality of them and so the exceptions may be left out of account.

Under section 376, Indian Penal Code, the age of the woman, who is a wife, should be raised to 14 years for the same reasons.

2. I have stated a few reasons above. The most of the population in this country lies in the villages and people there are generally illiterate and their standard of morality is not very high. Considering this and the fact that our women-folk are almost all illiterate, it is essential that the age of

consent should be raised as suggested above. The girls would in that case be in a better position to receive higher education in public schools freely and that is a very great need of the time. We are advancing on the lines of the civilized countries of Europe and there is no reason why we should lag behind those countries in this respect.

3. Crime of seduction is most frequent in this district, and that of rape is not so frequent. The amendment of 1925 has succeeded in reducing cases of rape to a certain extent but I think that a further raising of the age would make the law considerably more effective. Without entering into the independent discretion of the Judges and the Magistrates so far as individual cases are concerned, I would suggest that they should take a serious view of this offence and set aside "the misplaced mercy" in pronouncing sentences for these offences. My experience shows that there is need for them to pass exemplary and deterrent sentences which will go to minimise the crime.

4. So far as I think, although I had had no such case before me, the amendment of 1925 has been effective to a limited extent in all the three cases under this para. The provisions of law have not yet reached the masses living in distant villages and so the effect under 4 (3) is not a very marked one. However, I think that the suggestions contained above would go a long way to making the law effective.

5. The usual age at which the girls attain puberty in this part of the land is between 13 and 14 years. It does differ in different castes and communities according as the custom of marriage and Parda system goes and in different classes of society according to their standard of living. A girl would attain puberty earlier in a well-to-do family, rather than in one in which they had not enough to live upon. Thakurs, a section of the Kayasths, and Musalmans are well off in these parts of the country.

6. Cohabitation is not common before puberty in this district, while it is soon after puberty. The girl attains puberty near about 13 years of age. I had no such case in this district during the last eighteen months.

7. The present enlightened view amongst the Musalmans and Hindus does not admit of any injunction in the matter of early consummation of marriage before or at puberty. The second part of the question does not arise.

8. Gaona ceremony is generally performed in this part of the country. Generally it coincides with or is followed by the consummation of marriage. The Gaona is performed generally after the attainment of puberty.

9. Yes, I do consider it to be so generally. But, of course, there are cases in which puberty is attained at a comparatively short age and in that case it will not be sufficient indication of physical maturity. The age of fourteen years may be taken as a safe limit.

10. Not below sixteen years of age generally, so far as I think.

11. Yes, I have come across such cases. I might mention just one. The age of the girl raped upon was seven or eight years. She had sustained very serious injuries on her private parts and was bleeding profusely. It was a case in Muttra District.

12. Yes, I do consider that to be so for obvious reasons. The Parda system also comes in when we take into account the causes that vitally affect the high maternal and infantile mortality.

13. Yes, there has been a development. It is distinctly marked in the advanced and literate people while its effect among those classes who are in the back-ground is rather slow.

14. Yes, a wrong notion goes like that among the backward classes.

15. Yes, difficulties have arisen. I think that raising of the age would minimise those difficulties inasmuch as a girl of sixteen years of age can be easily marked out because of the general development of her body from one who is of twelve or thirteen years of age.

16. Yes, as explained above.

17. I would separate them, for the nature of offences differ. The maximum punishments provided appear to be adequate and while I would not recommend a modification of them, I would like those who are charged to dispense justice not to take a lenient view of the offences.

18. The procedure now prescribed appears to be satisfactory for the District Magistrate is expected to be as experienced as the Sessions Judge. I would make the difference with two type of offences for that is logical and reasons have been given above.

19. I think that a definite provision may be added to the general law of the country, for those that exist are too general and it is more often than not that an accused manages to escape punishment under those sections.

20. I consider the first part to be more effective. I may also add that the advanced view in the land is not adverse to proposed legislation under the second part of the question although the extreme orthodox section will militate, however feebly.

21. The result of the general law would be more effective and bring about the desired result earlier and hence I would prefer that.

**Written Statement of the Hon'ble Sheikh MAKBUL HUSAIN,
C.I.E., District Magistrate, Jaunpur (United Provinces).**

1. None among the mass of the people.
2. I consider the proposed advance in the present law certainly justified as the present ages are low.
3. No. No cases have come to my notice.
5. Twelve as rule. It depends largely upon the state of nourishment and health.
7. No. Even low class Musalmans indulge in early marriage. It appears to be a matter of simply following old traditions.
9. No. There can be no general rule, but I should consider an age below 14 certainly unsuitable in the interest of the girl's health.
10. Must depend upon the class of people and education.
12. Certainly.
13. I do not think so. United Provinces is the most tradition-bound province in the country.
14. Not among the high class Musalmans.
15. A proper system of registration of births should be adopted.
16. I do not think it would.
17. I see no need for this.
18. No.
20. The latter would be more effective, I think. Neither, I fear, but such "Public Opinion" as is likely to be against it does not in my opinion deserve any importance in such matters of vital interest to the people.
21. If you rely on the latter you may have to wait for half a century.

Written Statement, dated the 25th December 1928, of RANI MOTI CHAND, Benares.

There is no denying the fact that the present provisions of law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code do not meet the requirements of the society which is making sufficient headway towards the recognition of the evil that the low Age of Consent as allowed under the existing law is detrimental to the full growth and deve-

lopment of girls to womanhood. It is an admitted fact that the girls of to-day are the future mothers of the nation and unless full legal protection is extended to them, India cannot rise in the scale of nations.

It is difficult to imagine that there will happen a complete social revolution which will bring about the desired state of affairs as far as the girls are concerned and therefore it is highly desirable that there should be some very effective law to deal with the present evil.

I have read with great satisfaction that in Lancashire it is proposed to supply a pint of fresh milk on each school day to every poor child in Westhoughton schools who may be suffering from malnutrition and to provide Codliver oil and malt to children who require special nourishment. This care and attention is bestowed not as a matter of mere charity. The authorities have undertaken to do so because they realize their national responsibilities. I think it is high time that we should also have turned our attention to the appalling state of affairs in our own society with regard to the girls on whom our future entirely depends. I would, therefore, suggest only one remedy for all this and it will be to raise the marriageable age of boys to 18 and of girls to 14/15. This will solve all the difficulties, for I am convinced that high mortality among females is principally due to early maternity. This very cause is also applicable to the high infant mortality in the country.

For the trial of marital and extra-marital cases I would suggest the creation of special tribunals and would fix any maximum punishment allowable under the law for those who ravish the modesty of young girls.

Written Statement, dated the 26th December 1928, of Pandit PANCHANAN TARKARATNA, 88, Mansarobar, Benares City, Permanent Address Bhatpara, District Hooghly (Bengal).

1. There is no dissatisfaction with the state of law as to the Age of Consent as contained in sections 375 and 376, I have no objection to the raising of Age of Consent to 18 as outside marital limits, so that innocent girls may not fall a victim to rogues and scoundrels. No law should be made to fix up the age of the consummation of marriage. Cohabitation before puberty is strictly forbidden by the "Shastras" and the law, fixing up the age of the marital couple for cohabitation, must be in accordance with the Shastric injunctions.

2. The answer to question 2 will be found in Answer 1.

3. The question is not clear. Does "In your part of the country" convey the idea of our village, sub-division, a district or a province (ordinary or as made by state)? These sorts of crimes are rare in our village and sub-division. After the last Mahomedan riot I hear such cases occurring in large numbers in East Bengal. In the District of Midnapore, such cases are sometimes met with. I have heard of one or two such cases occurring in the south of Calcutta. In the tea gardens of Assam such crimes are sometimes committed.

I do not think the amendment of 1925 has been successful to the extent desired. In a rape case "Benefit of doubt" should not be given to the accused. Section 275, Indian Penal Code, should be applied unlike other sections of that Code. For, when an Indian woman accuses any person of such crime it must be understood that the accusation is not false.

The minimum punishment for such offence should not be less than 5 years.

4. The amendment of 1925 has not been quite successful. It is not the law, but the excessive dowry system which compels the parents to marry their daughters at an advanced age. It depends on the society, and with the progress of society the desired reform will by itself come.

5. Generally, our girls, not of poor parents, attain puberty at about 13. The girls of poor parents attain it at an advanced age. It does not differ in different castes, communities and classes of society.

6. Cohabitation before puberty is scarcely done. Cohabitation after puberty is done, and it is enjoined by the Shastras. If a girl attains puberty before 13, she can be cohabited with according to Shastras.

I have not heard of any case, brought to the Court, for cohabiting with a girl who has attained puberty but whose age is not less than 13. I heard of one case in which a man was put to jail for cohabiting with his wife, aged not more than 13 years, and of another during the viceroyalty of Lord Lansdowne.

8. Garbhadan ceremony is performed by us. This ceremony must be performed within 16 days, 4 days having elapsed from the date of the attainment of puberty.

9. Yes.

10. It is very difficult to fix up any age. It depends on the intelligence and education of girls.

11. I do not remember whether I heard of any such case.

12. I do not think so. High infant and maternal mortality is solely due to want of proper nourishment and the violation of the natural law that, after the birth of a child, the wife should not cohabit for a certain time.

13. The term "public-opinion" is misleading. A number of men forming a society may call themselves a public body. If the question is asked to such men then I think that they want to enhance the age of consent in marital state. But in the truest sense of the term I must unhesitatingly admit that the majority of men do not want the Age of Consent to be enhanced in marital state.

Outside the marital state, the opinion of myself as well as of many others is that the Age of Consent should be enhanced to 18.

14. The women of our country wish—their daughters should associate with their husband so as to create love between them, but not in the sense of sexual intercourse.

15. The Birth and Death registration office should be well organised, and then there will be no difficulty in ascertaining the age of girls.

16. Error may often happen in any other method except the one I have suggested in my answer to question 15, and as a result of which an innocent may be put to trouble.

17. I do think there must be some difference. About the punishment of the offence committed during extra-marital stage, the punishment must not be less than 5 years; but offence under marital stage, when cohabitation has been made before puberty, the punishment should not exceed one year. Fine should be added to both these kinds and a part or whole of it should be awarded to the plaintiff.

18. Offence under marital stage should be compoundable one.

20. I do not wish that any law should be enacted for fixing up the age of marriage. Regarding the age of consent I have answered before.

21. I am not in favour of penal law, education and social arrangement will serve the purpose.

Written Statement, dated the 28th December 1928, of Pandit LAKSHMI KANT PANDEY, B.A., LL.B., Advocate, High Court, Benares.

1. There is considerable dissatisfaction with the state of the law as to the Age of Consent as contained in sections 375 and 376 of the Indian Penal Code. The Age of Consent is too low.

2. The present limit of the Age of Consent is too low. In my opinion the Age of Consent should be raised within the marital limits to sixteen years and outside the marital limits to eighteen years. Early marriages and early procreation of children are in a large measure responsible for the weakening of the race. A mother of fourteen years even if perfectly healthy cannot be expected to bring up her child properly she being herself a mere girl. Apart from the fact that the females suffer from a large number of maladies and the sweetness of their lives is poisoned on account of premature motherhood, the large number of infantile mortalities in India are mainly due to this cause. It is unfortunate that most, if not all, of such females contract serious maladies and their lives are cut short. Their deaths mean a ruin of the career of their young borns whom they may have had the misfortune to leave behind.

3. Crimes of seduction and rape do occur in my part of the country but they are not so frequent as in some other provinces. I do not think that the amendment of the law, made in 1925 raising the Age of Consent to 14 years, has succeeded in preventing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. Girls of such tender years cannot be expected to have sufficient foresight to consider all the pros and cons of their action before giving their consent. A little feolish action on their part is calculated to ruin their lives for ever without the offender being called to task for his action. I would suggest that the Age of Consent outside the marital state should be raised to at least eighteen years in order to make the law more effective and prevent such heinous offences.

4. I do not think that the amendment of 1925 raising the Age of Consent within the marital state to 13 years has in the least been effective in protecting married girls against cohabitation with husbands within the prescribed age limits by postponing the consummation of marriage or by stimulating public opinion in that direction or by putting off marriage beyond 13 years.

Amongst the better and educated classes on my side of the country there has no doubt been a stimulation of opinion in that direction and girls are now married not so early as before. But this is not due so much to the stimulation of public opinion as the difficulty in getting suitable matches and the payment of heavy dowries.

I would suggest legislation to the effect that the girls should not be married before they are sixteen years of age. To make the law more effective there should be special Magistrates in each district to whom applications should be made for the grant of marriage license. Such Magistrates on being satisfied that the girl is not less than sixteen years shall grant the license. Any person who is a party to the solemnization of a marriage for which no license has been granted should be punished with a heavy fine. No doubt such a legislation immediately is calculated to lead to the raising of a large amount of hue and cry. But in the interest of social purposes it has to be faced.

5. The usual average age at which girls attain puberty in our part of country is fourteen years. But there are instances of early developments in well-to-do families. This differs in different classes of society. Girls of well-to-do families attain puberty earlier. In some instances I have noticed girls of only ten years well developed. But such instances are rare. The average age is 14 years.

6. Cohabitation in my part of the country with girls before puberty and before they attain the age of 13 years is common. This is so specially in the low community. None of these cases ever come to Court. I know of instances in which girls have been maimed for their lives. One girl had the misfortune of dying a day after the consummation of the marriage.

7. The practice of the early consummation of marriage before or at puberty is not due to religious injunction. The Sloka "Ashta barsha bhavet Gouri navā barsha cha Rohini, dasa barsha bhavet Kanya Ekadase Rajas-wala", is in a large measure responsible for all the troubles. It is due to early marriages and the inexperience of childhood.

8. The Gaona ceremony is usually performed in my part of the country. The practice has grown up to perform the ceremony soon after the marriage regardless of the fact whether the husband and wife have both attained full puberty. The consummation of marriage usually takes place soon after the Gaona. In some communities the practice is to perform this Gaona ceremony soon after the first signs of puberty in the girl, but generally it is performed regardless of it.

9. The attainment of puberty is not, in my opinion, a sufficient indication of physical maturity to justify consummation of marriage. I think at least two years after the first signs of puberty and generally on the attainment of the age of sixteen years a girl's physical development may be considered to be enough to justify such consummation without injury to her own health and that of her progeny.

10. I would put the Age of Consent outside marital limits in India for a girl at 18 years. At this age she may be expected to give a reasonable consent to cohabitation with due realisation of consequences. Within the marital state there is no question of consequences and there can be cohabitation after the attainment of sixteen years without any injury to her health.

11. Yes. I have. In one case a girl of about 14 years was married to a boy of about 25 years of age. Cohabitation resulted in hæmorrhage. The girl's life was saved but she became lame for her life. In another case a man of about 30 years was married to a girl of about 13 years. Immediately after the marriage the girl was brought to the home of the bridegroom who cohabited with her. The result was such a hæmorrhage that the girl died the next day of her marriage. There must be lots of such other instances but these two have come to my knowledge. There are thousands of cases in which girls lose their health and are mostly afflicted with some malady or another, hysteria, menstrual disorders, phthisis, etc., etc., due to premature cohabitation. I have noticed that those girls who were married late and had the opportunity of cohabitation after their attaining the age of sixteen years generally lead a very healthy life. While in the case of others life is misery and is occasionally cut short by the hands of death. The fate of poor children whom they may have the misfortune to leave behind can be better imagined than described.

12. Most certainly early consummation and early maternity are mainly responsible for high maternal and infantile mortality. It also affects vitally the intellectual and physical progress of the people. Children born of young girls with young boys as their fathers cannot be physically or intellectually strong. Their parents also cannot bring them up properly. In most cases their lives are cut short.

Apart from the above there are economic considerations also which vitally affect the intellectual and physical progress of the people. Young boys, on account of early marriages, are overburdened with a number of issues before they have established themselves in life. These children grow up and before their father is able to earn his living he has to look after their bringing up their education, marriage, etc. On account of all these reasons the nation is never able to grow, and few persons are able to lead adventurous lives. Their lives are really full of turmoil and misery in trying to make both ends meet.

13. There has been some development of public opinion in my part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925. It is not general. It is confined mostly to the educated classes. By educated classes I mean not those educated in Sanskrit only. It has very little affected the Brahmin community which is still very backward.

14. Women in my part of the country are still most uneducated. They have still their old ideas. They would like the girls to be married before they show signs of puberty and would favour consummation immediately on attainment of puberty. But some women are now having progressive views.

15. Considerable difficulties have arisen in determining the age of girls. The present method of determining the age by means of the evidence of a medical expert is most unsatisfactory. I would suggest, as far as possible, to procure the copy of the birth certificate of the girl and her brothers and sisters and prove by other conclusive and reliable evidence the identity of the girl whose birth certificate is relied upon. Where this is not available medical evidence is the only reasonable remedy.

16. I do not think that the difficulty would be reduced or minimised if the Age of Consent is raised to 14 years.

17. Yes. I would separate extra-marital offences and marital offences into different offences. The present punishment provided for rape is, in my opinion, suitable, for extra-marital cases. For marital cases with due regard to circumstances and gravity or otherwise of the offence, I would, for the present, think that a fine of Rs. 1,000 only or imprisonment of either description for a term which may extend to six months shall be enough.

18. Yes. I would make a difference in the procedure of trials for offences within or without the marital state. In the case of offences outside the marital limits, the present procedure is satisfactory. In the case of offences within the marital state I would take away all the powers from the police. The offences are to be cognizable, but no person below the rank of a magistrate of the 1st class (Stipendiary) shall investigate the offence, and the offence itself shall be triable by a magistrate of the 1st class.

19. I have already suggested above that marriages should be allowed to be performed only after the grant of a license by a special officer appointed for the purpose. If this is done, offences within the marital state shall be reduced to minimum. Besides when the offences are not to be investigated by a Police Officer, but by a Magistrate much of the troubles would be minimised.

20. The passing of penal legislation fixing a higher Age of Consent in marital cases is not likely to be satisfactory and is likely to lead to wide doors for chicanery and extortion. The best remedy lies in preventing marriages of girls below a certain age by fixing the minimum. The latter would be in consonance with public opinion in my part of the country.

21. I prefer to rely on the strengthening of the penal law to secure the object in view.

Written Statement, dated the 24th December 1928, of Mr. AYODHYA-DAS, Bar.-at-Law, Anandabhavan, Gorakhpore.

1. I am not aware of any particular discontentment in this part of the country.

2. I am of opinion that the time is not yet ripe for making any advance on the present law. Even the present law when the Age of Consent has been raised to 13, in big families is not effectively carried out, and as far as the poor men are concerned it makes little difference whether the present Age of Consent is raised or not. In most of the Kayastha and Chhatri families girls are seldom married before they are 16 and therefore as far as those families are concerned the present proposed legislation in further increasing the Age of Consent is unnecessary.

3. There are some rape cases confined to the poor and labourer classes in this part of the district, but such offences are not frequent. I can give no opinion as to the latter part of this question.

4. So far as the marital families are concerned I doubt very much whether the raising of the Age of Consent had any material effect in preventing married girls against early cohabitation.

(1) I don't know that the postponement of consummation of marriage has been affected by this legislation.

(2) My reply is the same.

(3) In well-to-do families where early marriages are prevalent this legislation had little effect. The steps which are proposed to make the legislation effective are:—

(a) That a strict law should be passed preventing marriages of the girls under (13); and

(b) that married boys should not be allowed to enter in public schools. Some Departmental Rules have recently been framed in U. P. and the same are being given effect to.

5. Usually the girls attain puberty in this part of the country between 13 and 14 provided they are well nourished. In poorer classes where nourishment is not sufficient it is regrettable that consummation takes place much earlier, because according to their system of marriage, they are married at a very early age generally under 10 and they are forced to submit to cohabitation earlier before the 13, because the parents of both sides do not object to it and the poor girls have got no resistance power. In rich families where also early marriage prevails the girls are forced to cohabitation before they attain puberty owing to want of education on the part of parents of both sides and there being an earnest desire to have children, and the poor girls due to modesty have got no wish of their own, to prevent such occurrences.

6. (1) It is common mostly in the poorer and labourer classes.

(2) In middle class

(3) In both rich and poor families where early marriages are prevalent. None of these cases have come to Court to my knowledge.

7. I don't think there is any religious injunction which is responsible for the practice of early consummation of marriage before or at puberty. It is mostly due to want or ignorance on the part of married couple and their parents. There is a general religious feeling among Hindus of higher classes that the marriage should take place before the menses commences, otherwise a belief prevails that if a girl is given in marriage (by *Kannya-dan*) after the menses has commenced then the whole ceremony is supposed to be devoid of all religious sanctity and this is to a large extent responsible for early marriages in various families. Moreover, there is a strong idea prevalent among well-to-do classes that a girl should be given away in marriage before her menses commences, and wherever this is not possible and such marriages have not been performed before menses commences then the fact of the menses is kept a hidden mystery.

8. The *Gaona* ceremony is greatly fallen into disuse and usually no such ceremony is performed. It is mainly due to economic poverty. Where *Gaona* ceremony is prevalent it is generally performed before the consummation of marriage because till *Gaona* is performed the girls live with their parents and there is hardly any opportunity for consummation of marriage taking place. The *Gaona* ceremony is not always performed after puberty, but is generally performed after one or three years of the marriage, and is seldom performed after two years of the marriage.

9. I do not consider that the attainment of puberty is sufficient indication of physical maturity to justify consummation of marriage. I would suggest that in order to ensure healthy progeny the consummation should not take place before the girl has attained at least the age of 14 and the boys of at least 19.

10. The girls' education is so much neglected at present that I don't think generally an average Indian girl will be competent to give an intelligent consent after realising the consequences before she is of the age of 16.

11. The cases have occurred in the families of my relations where early consummation of marriage have led to the poor health of the mother and to infant mortality. In the *Vaish* community to which I belong I find that the girls are usually married between the ages of 10 and 12 and *Gaona*

takes place between the ages of 13 and 15. Where cohabitation had taken place before 13 cases have come to my knowledge that girls became pregnant at the age of 13 and the children produced were of very weak health and most of them have died within a month or two. The mother's health had been considerably affected and by the time she was 18 or 19 she had become an old woman.

12. Yes.

13. No.

14. Yes.

15. Mostly rape cases that have come to my knowledge belonged to labouring classes and as far as those cases were concerned there was not much difficulty in fixing the age of the girl by medical examination.

16. If the age is raised from 13 to 14 the difficulty of determining the age or the margin of error would not be materially reduced, because in Medical Science it is very difficult to fix the age with certainty within a year or two. If the age is increased to 16 then only it is possible that the difficulty of determining the age would be reduced.

17. I would suggest very nominal punishment confined to fine in marital offences. So far as the extra-marital offences are concerned the law should remain as it is.

18. Offences within marital state should not be cognizable by the police and I would suggest no difference in procedure of trial of offences without marital state.

19. I cannot suggest any safeguard.

20. I don't think that penal legislation fixing a higher Age of Consent for marital cases would be more effective than fixing the minimum age of marriage. Such penal legislation would remain as it is at present a dead letter. If the minimum age of marriage is fixed it would be more effective. Public opinion is so weak in this part of the country that neither of the two legislation would be popular; but I would suggest that fixing the minimum age of marriage would be more effective than any legislation for fixing a higher Age of Consent for marital cases.

21. The real progress can only come in by means of social reform and education, but a legislation prohibiting early marriages would be more effective, specially if rules are made as suggested before that married boys should not be admitted in educational and industrial institutions it is likely that in the first few years this may act as hardship, but after the first few years are over this is bound to have a good effect on the general public.

Written Statement, dated the 19th January 1929, of Shreemati NARAIN DEVI, Luna Road, Benares City.

1. In Kashi or in the neighbourhood girls attain puberty at the age of 13.

2. Girls of every community attain puberty at the same period.

3. So far as I am aware, in respectable families or in educated classes cohabitation does not take place before puberty. It is seen that in some families where illiteracy is predominant cohabitation does take place before puberty, as soon as signs of puberty are visible. Generally cohabitation does take place at the age of 13 or after गौदा (a custom to allow cohabitation for the 1st time) ceremony is observed in all communities in this locality or if the girl attains puberty before this ceremony, the cohabitation is allowed.

4. Whenever before puberty or even on attaining puberty when the body of the girl is not strong enough and she is allowed to cohabit, it has a bad effect on her health, or if gets a child the offspring is very

weak, and the girl surely appears old very soon, this happens generally in higher classes who do not do manual work, of this I am quite certain.

5. The girls, who cohabit before attaining puberty, remain weak throughout their life, and brain also gets weak, and the children are very weak. In such cases children often die very early.

6. Foolish mothers, when their sons are of mature age, allow their daughters-in-law to cohabit as soon as signs of puberty are visible. In such cases girl's mother does not agree, but she is helpless.

7. Now-a-days if the Age of Consent be fixed from 13 to 14 or 15, this will not be considered as improper. Age of Consent should not in any case be less than 15.

8. If the age of marriage be raised, it is useless, unless the Age of Consent is not raised.

**Written Statement of Mr. KARUNASHANKAR VIASHI NATH
MADANMOHAN DAY, HARESH CHANDRA GOKAL CHAND,
Jeweller, Benares.**

According to our religion we are against raising the age of marriage or Gaona. There should be no legal restriction about this. Besides every one performs marriage ceremony in accordance with her religious belief or social customs, and such restriction is literally observed and children as the result of such marriage are heir to the property and life of their parents. So far there is no law on this subject. Still social and religious restrictions are strictly adhered to in preference to law. Under the circumstances raising of the age-limit is against the social law and religion.

Passing of law about this would be considered as improper.

Restriction about age allowed by religion or social customs is enough and correct. This is such a matter where religions or social restriction is preferable to law. People of different countries have different ways of life (eating, drinking, etc.), and climatic effects are also different. There are so many religions and various classes of mankind, and each of these has got different religions or mental ideas.

Development of mind and body is also different from one another due to the effect of climate and therefore restriction about the Age of Consent is different. Restriction by law would be more injurious than good. For example, a girl at the age of 11 generally starts to feel a desire of cohabitation which is very difficult to control, therefore raising the age-limit would possibly be injurious rather than good. There is a religious proverb meaning, till the age of 10 she is girl, after that Rajasula and if the marriage of the girl is not performed at that time it is a sin according to our religious books, in default thereof we shall make ourselves liable to be thrown into hell or shall be put to some such trouble. Such is the saying of a Rishi (Saint of Hindu Religion) that when a girl becomes Rajasula for the first time a sort of religious worshipping is enjoined by the Hindu religious books at the time, such is the first ceremony according to Hindu religion. There is a proverb. With Sanskars (performance of religious rites) a nation becomes powerful, such is the saying of ancient times when people were of much longer age, who used to live upto the age of one thousand years. Sanskar of Sita and Rukmari was performed accordingly.

Now-a-days death generally takes place at 50. Such law would never help much in raising the general age of mankind. We are of opinion that at present Gaona ceremony is performed when the couple become of proper age. Now-a-days tendencies for cohabitation among the boys and girls are

such that we conclude that a law to raise the Age of Consent would be a cause of much trouble. The word स्त्री (Woman) means the placing together of Shukra and Shonit. Restriction of age about marriage would be against religion and this would mean a great hardship to us. We would very much prefer to perform such ceremonies according to our religion. We do not mind if thus we lose our life even.

Proverb.—Our happiness depends on strict performance of religious rites and such is the way of getting salvation.

We wish to strictly observe our customs and ceremonies according to the sayings of our saints and sages. We humbly request that Government would by all means protect our religion. Nothing more to say with best wishes.

P. S.—Our request is that evidence of such persons may be recorded who have got 16 sons and daughters, because they fully realize their position and difficulties and such others who are in favour of this proposal should not only be asked to give their opinion. Such law would place more power in the hands of police to harass the people, and there would be many cases in the Courts and rich will oppress the poor and will threaten society in every possible way. Thus there would be much trouble, we therefore pray that the Government would look after the interests of their subject and would not pass such a law.

Written Statement (Hindi) of VIRCOHWAR BHATTACHARJEE, Kaviraj of Benares.

Marriage among the Sanatanists is a sacrament, which is as sacred as the thread ceremony. To see these religious matters being subjected to regulation by legislation, the mind of every Hindu is so agitated that he is sometimes prone to give expression to harsh words. The Bharatvarsha has been the treasure house of knowledge and is still keeping that flag aloft. The greatness of this country is thus sung by Shastrakaras. Manu says "All men in this world should take lessons in their life from the Brahman born in this Country".

The omniscient old sages have already made a clear exposition of Truth. To venture to suggest anything new in addition to that exposition is sheer folly.

"The learning, wealth and wife acquired in the past birth, comes forth in this life."

Millions of marriages take place every year through the influence of some unknown power and so many of them are broken. Young men and women marry after mutual love. But after a few days, that love disappears. Sometimes it also happens guardians marry brides and bridegrooms even against their will and yet the result is life-long happiness to the pairs. Therefore wise men regard birth, death and marriage as the result of former life. Our Shastrakars have also declared this.

Those who are firm believers in their religions, be they Mohamedans, Christians or Buddhists, must have blind faith and must abandon the application of logic to them. Ordinary people like ourselves cannot grasp the depth of religion by our gross vision. Therefore Shri Vyas says, "Follow the way of the great men".

No doubt, there are instances in the Puranas of girls married in an advanced age. But that is under peculiar circumstances and not as a general rule. The Puran writers have sometimes laid down observations on Dharma casually while writing history and not independently as such. But

the sages enumerated in the following verses were the real authorities of Dharma.

मन्त्रविष्णुहारीतयाज्ञवल्क्यशुनोऽङ्गिराः ।

यभापस्त्वसंवर्ती कात्यायनवृहस्पति ॥ १ ॥

पराशरव्यासशङ्खा लोखिता दक्षगौतमी ।

शातातपो वशिष्ठश्च धर्मशास्त्रप्रयोजकाः ॥ २ ॥

The Puranas were created for those for whom the Vedas were not available, e.g., women and the Shudras. How can those authors of the Puranas, who created them for all the common people, advocate the marriage of grown-up girls, which is opposed to all the Smritis? Those few instances which occur in the Puranas are only isolated instances due to peculiar circumstances, which are explained in their proper places. I do not go into greater details for fear of increasing the volume of this statement. If the Age of Consent Committee desires I shall explain the details of different ages of girls fit for marriage. I only dwell on one point before going to the questionnaire.

People advocating the marriage of grown-up girls, cite the following verses in support of their contention—

जनषोडशवर्षायामप्राप्तः पंचविंशतिम् :

यद्याधत्ते पुमान् गर्भं कुक्षित्यः स विपद्यते ॥

जातो वा न चिरं जीवेज्जीवेता दुर्वेलीन्द्रियः ॥

तस्मादत्यन्तबालायां गर्भाधानं न कारयेत् ॥

But they do not take into consideration what precedes these verses.

अथास्मै पंचविंशतिवर्षाय द्वादशवर्षा पन्नोमावहेत् । पितृधर्मार्थ-

कामसनाः प्रच्यतोति ॥

"After this, i.e., after a Brahmachari finishes his learning, he being of twenty-five years of age, should take a girl of twelve, so that he may secure the three Purusharthas. In the same Sushruta it is written that there are certain signs which may be taken to mean puberty. When these signs are present, even though there is no puberty, some medicines are prescribed for hastening it. It is said in Charak also that even if there is no actual puberty at 12, it is supposed to be internal. If Sushruta had intended that only a girl of 16 should be married, he would not have made mention of the marriage of a girl of 12. He only means to exclude girls of a very low age.

Leaving this aside, if girls of 16 alone are fit to marry, see what astrology says. "If a girl of 16 delivers or conceives, she dies with her offspring; so also does her father."

The Dharma Shastra also says—

त्रिंशद्वः शोडशाब्दा कन्यां विन्देत यमिकाम् षष्टवर्षोऽष्टवर्षा वा ।

i.e., if the bridegroom is thirty years old, the bride must be 16 and if he is 24, she must be 8. Even then the man of 30 may marry a girl of 16, if she has not attained puberty or if she is not well-developed.

Astrology prohibits consummation immediately after the first menses only if there is an evil combination of stars. All these authorities clearly establish that marriage must take place before puberty. As soil, for want of tilling and sowing, would be sterile, so also if not consummated at

puberty, may be sterile. The Ayurvedic authorities also state that national physical functions of the body, *e.g.*, calls of nature, sleep, thirst, the flow of the semen, etc., should not be withheld.

It is observed also that grown-up girl if unmarried sometimes brings disgrace to her father's family. I shall be able to submit names to the Committee, if so desired, of cases when a son was born within 3 or 4 days after marriage or a girl who ran away before marriage. Some people ask for medicine for abortion of unmarried girls. There are several such cases. The case in the Bethune College at Calcutta is notorious. Sexual instinct is overpowering and the Shastras desire a girl's marriage before it takes rise. This means that boys also should be married at an early age. Otherwise they are likely to contract bad habits. Even great sages in the Puranas have fallen; is it not folly therefore to expect abstinence from an average man, especially in these degenerate days? This is not a matter for the law to regulate. Such laws have been and will be ineffective. A law is only necessary to prevent rape and consummation of a girl who has not attained puberty. Such cases are often compromised before they come to Court. But the punishments according to Indian Penal Code, Sections 375 and 376, must be more severe, so that there might be a strong check on offenders.

3. Most of the offences in this world are for woman and gold. Therefore to say that they are more in one country and less in another is futile. I have seen these crimes equally prevalent in all classes in Benares.

In households where the mothers of the bride and bridegroom take delight in seeing that the couple begin to cohabit as early as possible, no law will be effective. This must be taken in the same light as eating, drinking, etc. If a man touches other peoples' property, it is theft. If it is his own, he can use it as and when he likes. The same is the case here.

4. No.

(1) It is very unjust. I have dealt with the argument in the introduction.

(2) Propaganda against cohabitation before puberty carried on by meetings, associations and pamphlets.

(3) Marriage after 12 years is opposed to religious books, astrology and Medical Science. Arguments have already been given in the introduction. Therefore, it is absolutely necessary to marry a girl after 8 and before 12.

5. Puberty must come in the 12th year. If not, it is an indication of ill-health. Therefore treatment must be given according to Ayurvedic treatment. Signs of youth depend upon good or bad bodily development. A very healthy girl may attain puberty even before 12. Weak girls may not attain it even up to 16.

6. (1) No.

(2) Yes, certainly.

(3) There is no concern with the age being either 12 or 13. It is never heard that such a question arises in the case of married girls. But such things may happen if there is enmity between the son-in-law and the father-in-law. But generally not.

7. Consummation is absolutely necessary as soon as puberty comes. It is written in the Vedas ऋतौ भार्या सुयेयात् । The Dharma Shastras unanimously declare as follows. , पुष्पकालि शुचिस्तस्माद् दम्पत्यर्थोऽस्त्रियं-व्रजेत्" If these injunctions are transgressed, the sin of foetus-killing is incurred.

8. Amongst generally, Gaona or Garbhadhan ceremony is observed. Sometimes it is along with marriage, sometimes it is after puberty, generally the latter.

9. The word "Ritu", *i.e.*, flower itself is indicative of physical fitness and mental development. So impregnation must come immediately after it.

10. In India—and I dare say all the world over—girls desire consummation after puberty. I have already alluded to this in the introduction.

11. Since I am a practising physician, I have come across several cases from which I can say definitely that a majority of young men have some defect in their secretion and the same is the case with a majority of young women. There are certain faults in early marriage and some in adult marriages. But the health of unmarried grown-up men and women is rapidly affected. Those who are married just at the time of puberty alone seem to be healthy. If the Committee so desires, I shall give hundreds of instances in support of my statement.

12. If before puberty some unnatural action takes place resulting in early puberty, then certainly the result will be injurious. But if after puberty in the natural course conception takes place and the rules laid down by the ancient Rishis are observed, no harm will result.

13. There is a move for the marriage of grown-up girls among the modern educated and uneducated people. But this movement is not found among the educated and uneducated people of the old type. The latter only know that since the flower has come, the fruit should soon come. In my opinion there has been no benefit by legislation.

14. Yes. They do desire it.

15. In such matters, no remedy will be of any use.

16. There are many women who require some special surgical operation after every delivery even up to 40 years, on account of some defect in the uterus. There are others who deliver at 16 even without a midwife. Therefore puberty is the only proper time. If there appears to be some incapacity, it should be treated. Because puberty is the outward appearance of inward desire. Therefore either to shorten and lengthen the time, both are injurious.

17. If it is established that there is cohabitation before puberty or if it is established that there is rape, the punishment according to Sections 375 and 376 is quite proper.

18. The matter should be considered by Officers of the highest grade.

19. I do not see any remedy beyond that indicated in answer 18.

20. If there is a law passed to bring about marriages of girls after puberty, it would be a great calamity on Hinduism. Religious ties would slacken. The health of the country would gradually deteriorate. I have made all this quite clear in the introduction. Therefore marriages must be according to Shastras. If it is proved that anyone cohabits before puberty, he should be punished.

21. I think there should be propaganda by books, essays, pamphlets, conversations, lectures, etc., about marriage and its utility, how to keep proper relations with a wife, what observances must be kept in married life, what rules should be observed during pregnancy, and after delivery. This would, God willing, have a salutary effect on the minds of people. No law would be of any use.

I am submitting this statement to the Committee as the result of my humble intellect and a little acquaintance with Shastras and the teachings of great Pundits. I bring to the notice of the Committee the resolutions of the conference of Brahmans in Benares in which it was unanimously resolved that marriages of girls must take place after 8 and before 12, that boys should marry between 20 and 30 and Garbhadhan should take place only in the case of girls, who have attained puberty. The Committee should not rouse the opposition of the people by doing anything against this.

ALLAHABAD.

Written Statement, dated the 15th August 1928, of Major Dais Raj RANJIT SINGH, O.B.E., (late) I.M.S., Honorary General Secretary, Agra Province Zamindars' Association, George Town, Allahabad.

I have the honour to give as follows the Association's opinion on the question of Age of Consent and Sections 375 and 376, Indian Penal Code. The Age of Consent has to be increased by a year in each case, if not more. It is a common-sense view, that the physique of men and women—I should say boys and girls—develops between 15 and 20 to its full growth and faculties, be they sexual or mental. They begin to get stamina and stability only after the 15th year of their age. And any consent below 15 years is to send a nation and its posterity to hell and bring about wreck and ruin wantonly. It entails moral and material ruin due to the immaturity of that development, stamina and stability at that age. Hence it is clear that we should raise the Age of Consent by a year in each case as concerned with the above two Sections of the Indian Penal Code.

But care must, at the same time, be taken, that the change and reform be introduced with as little police interference as possible, since it is a very delicate subject, bordering upon points of honour in this country, in more than one aspect in all circumstances. Under police harassment and persecution under such sections, if Police is allowed powers in such cases, will undermine Government sooner than even stagnation of Political reforms would do. Penalty and procedures under such sections, at least in the outset, should not be made too much of a nature as in cases of humiliating crimes. On these broad outlines, the association would support Government action in this matter, otherwise, the whole public, alive as it is to the desirability of having some such course to attack the evil, yet does not feel inclined to ask for Government help and for the long arm of the Law. And we have to take this feeling into account while recommending such measures.

Oral Evidence of Major Dais Raj RANJIT SINGH, O.B.E., (late) I.M.S., Honorary General Secretary, Agra Province Zamindars' Association, George Town, Allahabad.

(Allahabad, 14th January 1929.)

Chairman: Are you the Honorary General Secretary of the Provincial Zamindars' Association?

A. Yes.

Q. Were you in the I. M. S.?

A. Yes; I did honorary military duty during the war. I have otherwise been a general medical practitioner in Allahabad for the last thirty years.

Q. What is the membership of the Zamindars' Association?

A. It is over 400.

Q. Did the members of the Association look into the questionnaire, and is this statement the result of their consultation?

A. I have written that in my personal capacity. The statement is therefore note on behalf of the Association.

Q. Is it your idea that the Age of Consent may be raised to 14 and 15 respectively, that is, one year more than the present age? Or would you have more?

A. Yes; I would have them at 14 and 15 respectively.

Q. May I take it that you have had a very long practice as a medical man?

A. Yes.

Q. Have you had gynecological cases in the course of your practice?

A. Yes; quite a lot of them. I have had midwifery work also.

Q. Have you reason to think that in this part of the country there is breach of the law of the Age of Consent as it is at present at 13? Do you think that there are cases in which consummation takes place before 13 complete?

A. There are some cases like that in the cities, and in the districts there are quite a lot.

Q. There may be cases in which the girls have not attained puberty before 13. In such cases are there cases of consummation of marriages before puberty? Is it a small number or is it a very large number?

A. It is a small number.

Q. Is there any community in which the evil is common?

A. It is common amongst the lower classes, namely the Chamars, Kulis and others. I have got first hand knowledge of these things in the villages in the course of my work as a Zamindar.

Q. What is the usual age of marriage amongst them and what is the age of consummation? Has consummation amongst them any reference to puberty?

A. The age of marriage is sometimes so low as 4 and 5, and consummation has no reference to puberty.

Q. Do the parents keep their girls with them after marriage?

A. Yes; but though there is a Goana ceremony at the time when the girl is sent to her husband, it does not always depend upon puberty.

Q. How do they then regulate the Goana ceremony?

A. I think it is mostly a question of poverty; when the parents cannot feed the girl they send her away.

Q. Do you think that there is any regard or consciousness of the fact that there are physiological reasons which may be considered?

A. I do not think.

Q. Do you know of any communities amongst whom post-puberty marriages, say beyond 16, take place as a rule?

A. Amongst the educated classes, especially during the last 15 or 20 years, there has been a tendency to raise the age. But even there I have seen a young mother 10 years old. Amongst the educated Bengali community in Allahabad I have come across a case of a girl who became a mother in her 11th year, and it was a case of instrumental delivery.

Q. Are such cases common?

A. No; they are very rare.

Q. Have you come across girl mothers at 13 or 14?

A. Amongst the lower classes I have come across an appreciable number of girl mothers before 14.

Q. Is there a tendency here in Allahabad on the part of the better classes to go to lying-in hospitals, like the Dufferin Hospital?

A. Here the upper classes do not go to hospitals unless and until they think they cannot avoid it. It is only during the last few years that the middle classes have begun to go to maternity hospitals.

Q. Have you anything to do with the Dufferin Hospital?

A. No; but I have done a good deal of child welfare work in the Lady Chelmsford Child Welfare and Maternity League. We are supplying midwives and *dais* and we are trying to spread education of that kind amongst women.

Q. Do you keep records of the cases?

A. The committee does; and I am a member of the Committee.

Q. As to the Age of Consent, do you think that the law is generally known about here?

A. I do not think that it is known amongst the masses.

Q. Would you say that the law has been effective so far?

A. It has not been as effective as it might have been; but I cannot say it has not been effective at all, because village people come to know these things from their contact with city people.

Q. If the law is known, some people will say that they cannot commit the offence. Do you think that the law is known to that extent?

A. No; not to that extent.

Q. Have you known any such cases come to light?

A. I do not think I have had occasion to know such cases.

Q. At present between 12 and 13, cases under the marital relations are non-cognisable? Do you want it to continue to be so even when the age is increased? Or do you want police interference in a matter like this?

A. I would be happy if this thing could come from the social reform side.

Q. If the law of the Age of Consent has not been effective till now, do you think that increasing it by a year or more would make it effective? Or would you like that the public should be educated more on the subject and the law made more widely known?

A. Yes; I think there should be a little more spread of education of knowledge of the fact, and larger publicity.

Q. In cases in which such cases occur, how do you think detection is possible?

A. It is rather a difficult problem.

Q. With reference to question 20, would you suggest a law fixing the age of marriage as an alternative to the Age of Consent?

A. Yes; I think that appears to be the only alternative, and that is more likely to be effective.

Q. What age would you recommend for the minimum age of marriage for girls?

A. 16.

Q. And boys?

A. 20.

Q. Would you be satisfied with starting with 14 for girls?

A. Considering that this question really affects us as a nation and the abnormal high mortality amongst young life, which I think is largely the outcome of these child-marriages—I feel inclined to take courage in both hands and make the age 16 once and for all.

Q. Now in this part of the country is there not a very large section of orthodox opinion which holds that pre-puberty marriages are essential?

A. I believe amongst the uneducated people it is.

Q. Do you think the educated people will be more than 2 per cent. of the population?

A. No; but I believe that the influence of the educated classes is spreading.

Q. What do you think is the present orthodox opinion about it?

A. The orthodox opinion is for marriage before puberty, and it looks upon it as essential. But they are more or less moulded by the present circumstances.

Q. In view of this orthodox opinion prevailing to a large extent, would you have us begin at 14, or would you rather have 16 all at once?

A. I would go the whole hog, and make it 16.

Q. In the case of consent in extra-marital relations you say it can be 15. Are you prepared to go to 16?

A. I think it is better that it is 16.

Q. You say in your evidence that in taking steps of this kind one should not be very hasty. May I take it that the present age limits you have given are in consonance with that view?

A. They may not be.

Q. Do you want us to be cautious? You say that the whole public, alive as it is to the desirability of having some such course to attack the evil, yet does not feel inclined to ask for Government help and for the long arm of the law. And we have to take this feeling into account while recommending such measures. Are you here referring to the orthodox view, and do you mean to say that even in spite of that view, we should proceed?

A. Yes.

Mrs. Boudon: You say that you came across a girl who became a mother in her 11th year. Was it long ago, or was it recently?

A. It was in 1902, I think.

Q. Have you seen any cases recently of child mothers below 14?

A. I did not get gynocological cases myself. But I have seen them in the villages.

Q. What is the general condition of these young mothers? Do they go through their labour easily?

A. Only yesterday I happened to go to a village, and there I saw a young mother together with her husband's sister. That was in Benares State. The girl could not have been more than 14.

Q. In the cases in which you might have come across these young mothers in your gynocological work what is your opinion about them? Do they stand labour as well as older mothers?

A. I think it tells upon them very badly and affects their general health very adversely, and there is the further strain of suckling babies.

Q. Has there been very great trouble as a result of labour?

A. Mostly they get phthisis. Young mothers going on every second year for children is one of the most important causes of tuberculosis.

Q. Have you come across any cases in which first child-birth has been very difficult, or has resulted in harm to the mother?

A. Yes.

Q. Can you give us one or two instances, with the particulars about the ages of the girls and their caste?

A. In one case the age of the girl was 14, and there was damage to her private parts on account of her tender age and later on it led to general diseases.

Q. Was it recently?

A. Yes; during the last 3 or 4 years.

Q. We are told that motherhood below 16 is not very common. Is that so?

A. In the cities in the educated classes it may be very uncommon. But in the villages it is common.

Q. From your experience what would you put down as the usual age of puberty?

A. That depends upon so many cases. It varies so much between the different castes.

Q. Can you tell us anything about the difference in the castes?

A. It varies almost in the ratio of the difference of contact. In a village in which a girl is not associating with sexual ideas, or that kind of company she gets menses at her 14th or 15th year. But amongst the Mussalmans and other meat-eating people I find that it is a little earlier than amongst the vegetarians. It is the same amongst the Anglo-Indians and domiciled Europeans.

Q. What is the age amongst the educated and higher classes?

A. It depends very largely on the bringing up. If the girls are taught sex ideas, it is bound to be a bit earlier.

Q. You say that the Kohlis and other lower classes marry early. Is there widow-marriage amongst them?

A. I think there is.

Mrs. Nehru: Is pre-puberty consummation of marriage considered sinful amongst the Hindus?

A. I do not know; I have no idea.

Q. What is the prevalent idea amongst the people?

A. My idea is, that they do not consider it sinful.

Q. Is it considered to be sinful amongst the lower classes?

A. I do not think they trouble themselves with the idea.

Q. We are told that amongst the lower classes they are very particular about it, and that they never send their girls to their husbands till puberty is attained. Is that so?

A. My personal opinion is that in this part of the country they do not consider it so. I do not think they bother themselves very much about it. Their sending their girls to their husbands' houses depends more upon extraneous considerations than upon the real age, health or the growth of the girl.

Q. Are pre-puberty marriages still considered to be enjoined by religion?

A. I do not know anything about that part of religion.

Q. You come in contact with so many classes of people. Do you think that they consider that they are religiously bound to marry their girls before puberty?

A. It is an infinitesimally small percentage of people who think so. It may be amongst a few Brahmins who are very strict in the matter of religious customs.

Q. What do you think is their strongest objection to marrying girls late?

A. I think that is different amongst different classes of people. For instance, amongst Muhammadans, they would say that they would marry according to custom, because there is nothing in their religion one way or the other.

Q. Are there early marriages amongst Muhammadans?

A. Not comparatively so much as amongst the Hindus, but I think some Mussalmans marry early in this part of the country. In the villages even Mussalmans have pre-puberty marriage: but their proportion is much less than the Hindus.

Q. If religion is not the cause, can you give us any idea as to what prevents them from marrying their daughters late?

A. It may be due to want of education, and a fear that their daughters might go astray.

Q. Do you think that they have reasons to entertain that sort of apprehension?

A. Here again it is due to illiteracy; and also the moral tone of the villages being so low. That is one of the reasons especially in the villages.

Q. Are they justified in their apprehensions?

A. No; not at all.

Q. If they marry their girls late, will they suffer?

A. They will not, provided we raise them socially and give them more education.

Q. Supposing the present state of things continues, do you think there will be danger?

A. If there is danger at all I do not think it should be exaggerated. To a large extent they are not justified in their apprehensions.

Q. You say that this law is not known amongst the ignorant people. Do you think it is known amongst the educated classes?

A. I believe they do know, but they do not seem to bother themselves about it.

Q. Is the very fact of the existence of the law known amongst them?

A. It is not realised even if it is known.

Q. Do you think this age of 16 will be agreed to by people or will people submit to it if the age is fixed by law at 16?

A. I think they would gradually acquiesce in it wherever these strong measures are thought to be necessary from a national point of view.

Q. Do you think the opposition will not be very strong?

A. No; it will die very soon.

Q. Do you think the villagers will be able to realise it to be able to abstain from it?

A. Yes.

Q. Do you think any special measure of publicity is needed?

A. I think it will be very largely needed especially from non-official bodies such as the Seva Samities. They should carry on publicity campaigns and explain things to people.

Q. Do you think if it is not possible to fix a marriageable age, the Age of Consent law will be effective?

A. It is very difficult.

Q. To whom would you give the right of complaint in cases of breaches of the law of marriages as well as the Age of Consent?

A. In the villages I would refer these to the Panchayats.

Q. And in the towns? Do you think municipalities can take up such work by appointing Sub-committees for the purpose?

A. They should, and they should be made to.

Q. What should be the punishment in case of a breach of the marriage law?

A. It should be fine.

Q. Would you make parents punishable as abettors or as offenders?

A. Yes.

Q. In both the cases, if the boy is a major, would you still make the parents punishable as offenders?

A. Unless we make both parties suffer, we will not be able to give effect to the law.

Q. Will you make the boy responsible if he is over 18, and the parents responsible if the boy is less than 18?

A. Yes; and the punishment should be fine only.

Q. Why do you fix the Age of Consent at 16 in extra-marital cases. For all other purposes a girl is a major when she is 18. Do you not therefore think that 18 would be better than 16 as far as extra-marital offences go?

A. Looking to the climatic conditions and so on, I think 16 gives good maturity.

Q. We have been told that conditions in India are such that a girl attains intellectual maturity perhaps later than in other countries because she is kept in strict Purdah and does not get education. Would that not be in favour of raising the age higher than in other countries? In some of the other countries it is as high as 21.

A. Considering that we have to make a beginning with so many prejudices, I should be personally satisfied with 16.

Q. Do you think there are prejudices even as regards extra-marital offences? Do you think anybody will sympathise with offenders of that kind? Do you not think everybody wants to give protection to the girl as far as possible? Do you think there would be opposition if the age is fixed at 18?

A. I think there should be.

Q. Who do you think will be opposed to it?

A. In the hills there is some agitation going on about Naiks and it is possible that if you raise the age there will be a hue and cry.

Mr. Mitra: You say that the lower classes have pre-puberty consummation. What will be the proportion of that class to the whole population here?

A. I am afraid I am not an authority on that. If you go to the villages you find them to be common amongst the Chamars, Takurs and others.

Q. Do you think it will be about 50 per cent.?

A. No; it may be about 25 per cent. or even less.

Q. Do you know that there are orthodox people who sincerely believe that for the sake of religion they must marry their girls before puberty?

A. I have heard that there are such people; but I believe that their number should be infinitesimal.

Q. Have you any objection if it can be arranged that marriages can take place at any age, but consummation should be postponed till 16?

A. It will be impossible. There are some times circumstances in which the parents of the boy say that they must have the girl.

Q. Are you prepared to make exemptions for hard cases in your marriage law? For instance, would you say that the party should apply to the District Judge for exemptions? Supposing a man is old and dying, and wants to marry his girl; or supposing he has got two girls, and wants to marry them together, would you allow exemptions in such cases?

A. No; I would not exempt such cases.

Q. Do you not think there are people who sincerely believe that it is against their religion to marry after puberty?

A. We have already had too much of that in this country.

Q. You say that punishment in the case of the breach of the law should be fine only. Do you not think that that will be considered only as an item in the marriage expenditure? Fine would be a hardship more on the poor than on the rich.

A. Public opinion is gradually moulding itself, and raising the age. I would not go beyond fine at present.

Q. You say that girls attain puberty in different classes in different circumstances. Did you mark that in families where early marriages are common girls attain puberty earlier?

A. Yes; decidedly.

Q. Are you in favour of a system of recording of marriages?

A. Yes; I think it would be excellent.

Mr. Bhargava: You say that if the age in extra-marital relations is raised beyond 16 it will cause hardship in certain classes, namely, the prostitutes. What is the hardship that it will cause?

A. They will say that their girls are ready to earn a livelihood.

Q. Who will say that?

A. There are certain classes in the hills, especially the Naiks, who carry a regular profession.

Q. If there is a Bill in the local Legislature for the betterment of these people

A. Besides these Naiks, there are thousands and thousands of prostitute classes. I think that would be another question, and a debatable one, whether prostitution should be stopped at all.

Q. At present this profession is begun at 14 or 15, and if the age is fixed at 16 as you suggest, do you not think there will be hardship?

A. I do not think there will be the same comparative difficulty.

Q. Do you think 16 is a safe age according to physiological considerations?

A. Yes.

Q. But before a girl is forced into this profession, do you not think that she must be mentally mature to know the consequences of adopting this profession?

A. A girl born in the profession does not require long to know the consequences.

Q. If the age of the girls is fixed at 18, then the parents of the girl will say that they cannot maintain these girls till then. That is why you do not want 18. While giving some facilities to the parents, are you not depriving the girls of an opportunity of backing out of the profession because they are not fully intellectually developed for mental selection?

A. I think there will be only one case in a hundred where the girl will be found to get out of the profession.

Q. Is that not because they enter the profession fairly early, namely at 13 or 14? Do you not think that this is arguing in a vicious circle?

A. They are born in the profession.

Q. Do you think they are in a position to discriminate till 16?

A. I think about 16 they can discriminate.

Q. One may be able to understand whether a thing is good or bad, but one may still not be able to understand all the implications of the profession with an insight into the future of the profession. Do you think that girls of this sort or any other girls are able to understand such implications?

A. Some may not; but looking into the generality of the circumstances, I think you have to look to both sides of the question.

Q. Leaving prostitutes aside, do you think that an ordinary girl living in Purdah and not educated even up to the middle school standard will be able to understand the full implications of allowing a stranger to have intercourse with her?

A. I think in India she will understand the implications.

Q. Do you think that Indian girls are in this matter better off than girls in other countries?

A. Girls of 16 in other countries also understand it.

Q. You do not seem to care for the religious notions of what you call an infinitesimal class of people. Are you for caring for the susceptibilities of any single individual?

A. Personally speaking I think religion has done us a lot of harm in this country.

Q. Therefore whether there is dissatisfaction or not, do you want the age of marriage to be fixed at 16?

A. Yes.

Q. If some people say that they will resort to Satyagraha or to riots, do you think we should not care for that?

A. I think that in view of the harm that religion has brought into our country and its devitalising influences, we should face any danger.

Q. Would you place this reform over political reform in importance?

A. Political reform you can have in a nation which is healthy. What political reform can you have in a nation which is not healthy?

Q. Are you satisfied with the Government's attitude of neutrality on this matter?

A. I am very much dissatisfied. If the Government had helped us, we would have had these reforms long ago.

Q. If Government is agreeable to pass this legislation, do you think that Government should do propaganda of this sort to popularise the evil effects of early marriages?

A. If this subject is kept on the transferred side, I will not object.

Q. Do you want Government to spend money on this propaganda?

A. Yes; it is worthwhile.

Q. How would you make propaganda?

A. I will work hand in hand with the Seva Samities and with other organisations who come into contact with low classes. We can have cinema shows, in which we can show how we get pigny children because of early marriage and other evil customs. We can spend a lot of money on this.

Q. Do you think that Government has so far done anything in the matter?

A. I do not think any Government has done anything in this direction.

Q. You say that the Panchayats may be given power to complain. Have you got such Panchayats in U. P.?

A. Yes; big villages have got Panchayats and little villages are grouped together.

Q. In villages where there are Panchayats, Panchayats will report. But what about the villages where there are no Panchayats?

A. The Headman or Mukhia will make the report.

Q. Will the Mukhia report the marriages to the proper authority?

A. Yes; he will report it to whatever machinery may be appointed.

Q. Will you make it obligatory on the persons celebrating the marriages to report them?

A. That will make things easier. Marriages might be registered provided no fees are charged for the purpose.

Maulvi Md. Yakub: Is it possible for a girl to become pregnant before she attains puberty?

A. Not before she has got her menses.

Q. At what time do girls in this province attain puberty?

A. Generally between 13 and 14 or the beginning of 13.

Q. Does it vary in different communities, and the difference in the bringing up?

A. There are so many factors.

Q. Do you think that even the difference between different classes is likely to be more than one year?

A. It is generally one or two years, but sometimes it is even three years.

Q. Do some girls attain puberty at 10?

A. Very few.

Q. At 11?

A. Still fewer.

Q. What is the general age?

A. Between 12 and 14?

Q. At what age do they generally become mothers?

A. That depends upon when they are married. Some become mothers at 16 or 17, and there are girls who become mothers even in their 14th or 15th year.

Q. What would be the number of girls between 13 and 14 who suffer pain during child-birth?

A. Every female suffers pain during child-birth.

Q. Such pain resulting in injury or in her being crippled for life, or as a result of which either the mother dies or the child dies?

A. The greater the age, the less the danger.

Q. What is the safe age?

A. Lowest 16. It is a mistake to suppose that as soon as a girl has attained puberty she is mature to begin maternity.

Q. Is it not a fact that there are a large number of girls who are mothers at 14 or 15, and they are quite healthy and their children are healthy?

A. From my experience I have noticed that the first child born to such mothers is a weakling, and as the mother is grown up the subsequent children are stronger and healthier.

Q. You say that in cases of infringement of the marriage law the punishment should be fine only. Who do you think should be the accused in such cases?

A. The parents of both the parties. If the boy is mature he will also be a party.

Q. Would you allow the priest and the Pandit to be prosecuted?

A. They might be treated as abettors.

Q. In such cases would you give the right of complaint to the Panchayats?

A. Yes; information might be given by the Panchayats.

Q. Will you make it obligatory by means of legislation on the Mukhias and the Panchayats to report such cases?

A. Yes.

Q. In the urban areas?

A. I would entrust the power to the municipality just as they are responsible for reporting births and deaths.

Q. Would you like to have some preliminary enquiry in such cases before the accused is summoned in order to avoid malicious prosecutions on account of personal enmity?

A. I think that any Court which takes cognisance of such cases must make an enquiry before it takes the matter in hand.

Q. There will not be a preliminary enquiry in all cases?

A. I thought if the complaint was false, then the complainant might be prosecuted. I would leave the details to the legislators.

Q. By what courts would you like these cases to be tried? Would you be satisfied with the ordinary courts, or would you like to have a separate court consisting of a magistrate assisted by two non-officials?

A. I think that would be much better.

Q. As regards the Age of Consent, up to what age would you make the boy guilty?

A. I think up to 18 the boy should be exempted, and the parents made liable.

Q. Would you make the mothers liable as well as the fathers?

A. Certainly.

Q. Do you not think that in marriage matters it is the will of the women that prevails?

A. Yes; but by virtue of their being the fair sex I would give them the same punishment as men.

Mr. Kanhaiya Lal: Do you want to make these marital cases non-cognisable?

A. Yes.

Q. At present up to 12 the cases are cognisable, and after 12 they are non-cognisable. Do you want to keep the law as it is or do you want to alter it?

A. I will keep the law as it is.

Q. The complaint is that the cases are not brought to light. Supposing it is suggested that these marital cases should be enquired into only by gazetted officers of the police, like the Deputy Superintendent, would you make them cognisable?

A. In that case I would make them cognisable.

Q. Are you in favour of vigilance societies in the cities and rural areas to watch and report such cases?

A. It is very desirable.

Q. Would you have the members of the societies nominated by the executive authority, or would you have a partly elected and partly nominated body?

A. I think election would be better.

Q. By whom should they be elected?

A. By the municipal boards and districts boards, and other social reform organisations. They should be partly elected and partly nominated by these organisations.

Q. Do you think that caste panchayats will be able to help in these matters?

A. Yes; only if they are properly tackled and properly approached.

Q. It has been suggested that these marital cases might be made compoundable so that good relations might be restored between the parties where possible lest the girl might be ruined for ever.

A. How will the girl be ruined for ever?

Q. The husband might take another wife.

A. Cannot the wife take another husband?

Q. No; because there is no divorce by the women either amongst the Hindus or amongst the Muhammadans.

A. Then I will make it compoundable, but only in suitable cases where the magistrate permits.

Q. Do you think that the system of registration of births is working satisfactorily in the city areas?

A. I think generally people go and report.

Q. On whom would you place the obligation of maintaining the marriage registers?

A. I would create a small department.

Q. Would you place the obligation on the municipal and district boards or on the union boards and the village panchayats?

A. I think it is in Brussels that the Chairman of the Union Board records marriages, and the marriages are performed in the Town Hall. I think registration must be made over to the Municipal Boards and there must be a separate department for that purpose. In the rural areas the District Boards may do it.

Q. Would you give the power to an executive authority?

A. No.

Q. You have recommended 16 both for marriage and consummation. Are you aware that at a meeting of the All-India Sanatana Dharma Conference held at the time of the Magh Mela last year it was decided that the marriage age should not be fixed above 12? Do you not think that there is still a large volume of opposition against a marriage age being fixed higher than 12?

A. To me the question is the most important one. I will go the whole hog and face opposition rather than let the nation go down.

Q. What do you think would be the safe age for consummation of marriage without injury to the girl or to her progeny?

A. I should think 16.

Q. Do you think that consummation before 15 would be injurious?

A. I think so.

**Written Statement, dated the 14th January 1929, of Dr. KEES,
Medical Officer, Dufferin Hospital, Allahabad.**

1. Yes. There is dissatisfaction regarding law as to Age of Consent.

2. Circumstances which in my opinion justify—

(1) retaining law to Age of Consent as it is.

Social conditions especially those met amongst the poorer classes.

3. No cases of seduction or rape have been treated or admitted into the Dufferin Hospital, Allahabad, since I have been in charge since April 1927.

4. Yes, the amendment of 1925 raising Age of Consent to 13 years has been effective by postponing consummation of marriage.

5. Usual age at which girls attain puberty in the U. P. is between 12½ years to 13 years of age. Have not noticed any difference in different castes, communities, etc.

6. Have met only one case of cohabitation before the girl had completed her 13 years of age. She was said to be just 13 years of age and was two months' pregnant.

8. *Garbhadan* ceremony usually performed anterior to consummation of marriage. "*Gaona*" ceremony performed later—after attainment of puberty and about the age of 14 years.

9. No. I do not consider attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage.

The ideal age should be 18 years, about 5½ years after puberty.

10. At the age of 16 years a girl in India would be competent to give an intelligent consent to cohabitation, etc.

11. Yes. One case about three months back. Girl said to be 14 years of age, was delivered of a full term child, delivery normal by a midwife.

Perineum badly lacerated, complete tear down involving the Sphincter Ani. Girl's development poor, otherwise normal build.

12. Yes. I consider early maternity responsible for high maternal and infantile mortality other results vitally affecting the physical progress of mothers, viz., Osteo-malacia. Usual history is early marriage with a first delivery normal, then second delivery either forceps or craniotomy, and third delivery Caesarian section or second delivery Caesarian.

13. There has been further development of public opinion in favour of an extension of the Age of Consent only amongst the educated classes.

14. Yes. Women do.

15. Not had any cases.

17. No. I would not separate extra-marital and marital offences into different offences.

Amount of maximum punishment same as punishment under Indian Penal Code for Rape.

18. No difference in procedure of trial.

20. No. It would be more effective to legislate by fixing the minimum age of marriage.

21. Yes. I would prefer to rely on the strengthening of the penal law to secure the object in view.

Oral Evidence of Dr. KEES, Medical Officer, Dufferin Hospital, Allahabad.

(Allahabad, 14th January 1929.)

Mr. Beadon: How long have you been in Allahabad?

A. Since April 1927.

Q. Have you been in other places?

A. Yes; I was in Cawnpore in 1926 for 10 months; 4½ years in Quetta; and 6 months in Calcutta in the Dufferin Hospital.

Q. Altogether how many year's service have you?

A. About 8 years.

Q. In all these places where you practised, did you find child marriages very common?

A. I found child marriages more common amongst Hindus than amongst Muhammadans.

Q. What is the usual age of marriage here?

A. 14.

Q. Do you have maternity cases only or do you have all kinds of cases?

A. I get cases of all conditions.

Q. Do you have maternity practice?

A. A good lot of it. I had 199 cases last year.

Q. Do you find any special trouble amongst young women?

A. There is a lot of osteo-malacia here.

Q. At what age do they get osteo-malacia?

A. At about 20. They have generally a normal baby at the first delivery; the second delivery is either forceps or craniotomy, and the third or second is caesarian.

Q. Is osteo-malacia more common amongst girls who begin maternity at 14 or 15, or is it more common amongst mothers who begin at 16 or 17?

A. We have got cases at all ages. It is sooner amongst girls who begin pregnancy early.

Q. With regard to the gynecological conditions do you find any special trouble as a result either of early cohabitation or early maternity?

A. I had recently a case of a girl of 14. The delivery was normal, but the perineum was badly lacerated, and there was a complete tear down involving the Sphincter Ani. I think that is due to early maternity. The girl was a Dhoby's daughter, and there was a very bad tear.

Q. Do you think the tears are worse in these young mothers?

A. I think so.

Q. We have been told that the parts are elastic and therefore there is no difficulty in these early pregnancies. Do you think so?

A. I have not had very many cases like that, but I have seen a few cases where there were bad tears.

Q. Is there a great liability to abortion in these young mothers?

A. I cannot say it is specially so in young mothers. It is also found in old mothers.

Q. Do you think that young mothers are more liable?

A. It is so common here; I cannot say what it is exactly due to.

Q. What would you put that to? Is that due to any special disease?

A. Of course more than 50 per cent. of the abortions are due to venereal infections.

Q. Do you notice that the results of venereal infection are harder on the young mothers than on old mothers? Do you think there is any special trouble?

A. I cannot say that I have come across any special difficulty.

Q. What about the babies of these young mothers? Are they all right?

A. They are quite good; though the mother is not always so healthy as the babies.

Q. What about the vitality? Do you think if a girl is properly nourished there will be any special difficulty?

A. It tells upon a young mother more than it does on an older mother. The young mothers become old women by 30.

Q. Do you not think that it might be due to repeated pregnancies?

A. Yes.

Q. Have you noticed any cases in which a woman has become sterile after the first child-birth?

A. One child sterility is very common here.

Q. Do you think it is commoner amongst young mothers?

A. One child sterility is due to sepsis.

Q. Do you think that young mothers stand sepsis fairly well or do they succumb?

A. They do not succumb. They recover, but become sterile.

Q. Have you been long enough in any of the cities to notice the development of children?

A. No.

Q. Have you met cases in which there was mental trouble as a result of early consummation?

A. I have not.

Q. Or as a result of first cohabitation?

A. No.

Mrs. Nehru: Can you tell the age of the youngest mother you have come across?

A. I came across a mother at 14 only three months back.

Q. In Cawnpore, Quetta, Calcutta and Allahabad, where of all these places you saw the youngest mother?

A. 14 is about the youngest I have come across.

Q. Have you had many cases of 14?

A. No; not many.

Q. What are the class of patients who come to your hospital here as well as in other places?

A. In Quetta I had Muhammadans from respectable families. I had Pathans, Afghans and Baluchis.

Q. What class of people go to your hospital in other places?

A. We get both high and middle class people. We do not treat prostitutes.

Q. Have you noticed any difference in the age of puberty in the different classes or castes?

A. Due to climate it is sometimes 12 to 13 in some places and 13 to 14 in others. In Calcutta it is 13 to 14.

Q. Have you noticed any difference between Calcutta and here?

A. I was only 6 months in Calcutta and I have had no time to notice much.

Q. Do you think that later deliveries are more difficult?

A. Supposing a girl is married young, the first child will generally be a normal baby. The next delivery is difficult. In the third case the child has to be destroyed. That is so in cases in which osteo-malacia develops. There is a lot of it in this province.

Q. Do you think that if the duty of reporting cases where maternity comes on before the prescribed age is fixed upon the doctors they will be able to fulfil it?

A. I do not think so.

Q. What do you think will be their difficulty?

A. They will get into bad odour with the patients.

Q. Supposing the reporting is confidential?

A. I have not had much private practice myself, but I think we will be up against a lot of difficulties.

Q. Do you think 16 complete would be a safe age for a girl to be a mother? You have suggested 18 as an ideal.

A. 16 will be safe.

Mr. Mitra: Do you think that the age of puberty varies with the difference in climate?

A. Yes; in colder climates it is later.

Q. Does it differ with vegetarian and non-vegetarian diet?

A. I have not noticed it.

Q. Have you found cases of child-birth before 14?

A. I have come across maternity at 13, but I did not deliver the girl.

Mr. Bhargava: Do you think maternity cases at 14 have been very few?

A. Yes.

Q. Do you think children of mothers at an advanced age, say 25 or 30 are better than those born to the same mother at 16 or 17?

A. Yes; I think they are better.

Q. Intellectually as well as physically?

A. Yes.

Q. You say that the ideal age for cohabitation would be 18, but in India a girl of 16 would be competent to give an intelligent consent. Are you of opinion—leaving aside marital relations—that the age might be increased to 18 if the connections are with a stranger?

A. The ideal would be 18, but for India I think it can be 16.

Q. As against tempters and seducers do you not think that a girl requires protection for a longer period than 16?

A. Yes; it can be 18.

Mr. Muhammad Yakub: Do all the mothers at 14 receive injury during child-birth?

A. I have seen only one case.

Q. At 15?

A. We do not get many such cases in the hospitals. They are attended to outside the hospital by the midwives. Only cases which are considered hopeless come to the hospital.

Oral Evidence of Dr. R. N. BANERJI, Honorary Secretary, Child Welfare Centre, Allahabad.

(Allahabad, 14th January 1929.)

Mrs. Beadon: Are you a private practitioner?

A. Yes. I was also the Secretary of the Medical Association for the last ten years.

Q. Have you been taking up maternity cases?

A. In this side I haven't been taking up maternity cases but I have to do a fair amount of gynecological work.

Q. Do you find young girls under 15 coming up for gynecological complaints?

A. Yes.

Q. Are they mostly married girls?

A. Yes. They come for menstrual disorders.

Q. How many women come to see you in a month?

A. 200.

Q. Of these 200 how many would be girls under 15?

A. 25.

Q. Of these 25 how many girls come for gynecological complaints?

A. 4 or 5 per cent.

Q. In your experience have you found the girls of 14 and 15 giving the history of maternity or do they give the history of early consummation?

A. They give the history of maternity.

Q. When do the troubles arise?

A. The troubles arise after the child-birth.

Q. Have you seen their children?

A. Yes.

Q. What do you think of their children?

A. They are quite healthy.

Q. Do you think that early maternity is an evil or do you think that it is good?

A. Early maternity upto the age of 15 is an evil.

Q. Don't you think that the children are bad?

A. The children are all right but it is an evil to the mother.

Q. Do you think that there is any difference in the development of these children?

A. Personally I have seen these children for a pretty long time as a family doctor. I think the children are quite healthy and all right. The real difficulty arises where there are too many children.

Chairman: Do you not find any difference between the children born to a girl who starts motherhood at 18 and the children born to a girl who starts motherhood at 14 or below 14?

A. Take a group of mothers who are having late maternity and another group of mothers who are having early maternity as stated above. Then you will find in both cases that there is not much difference in the children physically.

Q. Do you think that there is a fairly large amount of pre-puberty consummations?

A. Leaving aside infant marriages, I think in towns the people marry their girls late.

Q. Do you mean to say that the majority of the people marry early?

A. They may marry their girls early but the gaona ceremony takes place only after the menstruation.

Q. Are you talking of the higher classes or the lower classes?

A. I am talking of the town population.

Q. When you say that you don't find much difference between a mother of 14 and 18, why do you call this an evil at all?

A. I call it an evil at 14 because the mother is not developed at that time physically.

Q. You don't think that would happen to a girl of 18?

A. The development is reached at this age.

Mrs. Nehru: Do you think that the age of consent law is known to the people?

A. The average man in the street does not know very much about it.

Q. Do the educated people know it?

A. I never heard them talking about it.

Q. Do you think that it has had no effect?

A. I think so.

Q. Do you think it is desirable to stop early marriages by legislation?

A. It would be very desirable now if early marriages were stopped by legislation, if it were possible, because it will give the mothers a chance.

Q. Why do you say if it were possible. What are the difficulties that you are thinking of?

A. The difficulties in a matter like this are these. It is not possible to override the customs and manners. Personally I think a campaign of social education will do much better. You may legislate and that is one thing, but it will be very difficult to carry out that legislation. You cannot punish everybody.

Q. If there is a marriage law, what age would you recommend as the minimum age of marriage?

A. I personally as a medical man would put it at 16.

Q. What age would you recommend from a practical point of view?

A. 15.

Q. Do you think at present the age of consent law is broken in a very large number of cases?

A. Yes.

Q. But you say that consummation takes place mostly after puberty.

A. Yes.

Q. So according to you puberty must be earlier than complete 13.

A. Yes.

Q. Does the consummation of marriage vary amongst different classes or communities?

A. Yes.

Q. Can you say amongst whom it is early and amongst whom it is late?

A. I can speak of Bengalis where in certain communities they are strict about it and in others they are not but in other castes like the Khattris and others there is not so much early consummation of marriage. They marry their girls at a late age.

Q. Can you give any reason why inspite of their education amongst the Bengalis, the age of consummation is so low?

A. It is on account of certain customs which are time-honoured things.

Q. But don't you think that some other people have got out of those customs?

A. The educated Bengalis have got out of those customs.

Q. Amongst the Bengalis is dwiragaman invariably observed?

A. It is invariably observed in one form, and that is when the girl finally goes to live in her husband's house then the dwiragaman ceremony is observed.

Q. What period elapses between the marriage and the dwiragaman ceremony?

A. From six months to two years.

Q. Is it getting out of vogue gradually?

A. Yes.

Mr. Bhargava: About your child welfare centre, will you tell me when this institution was started?

A. In 1923.

Q. Do you have any annual show?

A. Yes.

Q. Do you find any difference in the state of babies?

A. The child welfare centre is supposed to attend to the mothers at the time of confinement and to attend to the children when they are sick upto the age of 1 year. There has not been much effect on the physique of the children but the infant mortality has been very much reduced.

Q. Does your institution get any aid from Government?

A. Yes. We get Rs. 4,000 per year.

Q. Does your institution train Dais?

A. Till last year our institution was training dais but from this year the local maternity work is left with us.

Q. What kind of mothers come there?

A. Poor class mothers come.

Q. Do you get mothers below 16?

A. Generally mothers of the age of 14 to 35 come.

Mr. M. Yakub: Is the first child more healthy than the subsequent children or vice versa?

A. One medical opinion is that the second child is always the smartest and the best whereas the first child is not so, and still there are so many factors say the food conditions, the economic condition of parents and so on for deciding this point.

Q. Is it a fact that the more a girl advances in age the more the children are healthier?

A. I cannot say that.

Mr. Kanhaiya Lal: Can you tell us whether the weight of babies of girl mothers of 13, 14 or 15 is below the normal as compared with babies of mothers of a higher age?

A. My opinion is that babies are healthy from the weight point of view and size too as babies of older mothers.

Q. What is the safe age that you would recommend for consummation of marriage?

A. 15.

Q. There is a complaint that these marital cases or breaches of the consent law are not brought to light. Can you suggest any measures for bringing these cases to light. Can medical men and women help us by reporting these cases confidentially?

A. I don't think so because it will be a breach of confidence.

Q. Supposing there is a rule, will they report then?

A. We are not bound to report. I personally think that even if the law is there, it will be very difficult for the medical man to report. Nobody will come to him if he were to undertake this work.

Q. Can you suggest any other measures for bringing these cases to light?

A. I haven't thought of any and it is very difficult to suggest off-hand.

Q. Do you think that your medical association will be able to help us in this matter?

A. We can consider this matter but I cannot tell you that we can give you any practical or effective help in the matter. As a matter of fact the real thing is that you should educate the people and tell them what are the evils of early marriage and early consummation and about other things. We will carry on a social propaganda work but not a detective work.

Written Statement, dated the 31st July 1928, of Mahamahopadhyaya Dr. GANGANATHA JHA, M.A., D.Lit., LL.D., Vice-Chancellor, Allahabad University.

1. Not among "the people"; but there is a certain amount of manufactured dissatisfaction among the so-called "advanced" people.

2. At the very outset I may say that I confine my opinions to the case of married couples. I have always felt that it is not only wrong but also futile for the legislature, or even the State, to interfere in the matter of social or socio-religious customs. I remember the agitation in connection with a similar bill during the Viceroyalty of Lord Lansdowne. There has been absolutely no difference resulting from that enactment. If there is a tendency among the people against the practice of early consummation of marriage it is the result of their own inner consciousness of its unhealthy effects. I am quite sure, apart from the students of the Penal Code, not one man in a thousand knows anything about the present law on the subject and yet it cannot be denied that there is growing a slow but steady opinion against the practice. The proposed legislation will also have no effect, except that the litigious instincts of the people and the hatred between class and class and men and men have grown so strong that there may result a certain amount of trouble by complaints, real or false, made by the people against one another. The greater the publicity given to the proposal and the consequent agitation the greater the chances of such frivolous complaints. My opinion therefore would be that there is nothing to justify the proposed enactment. It will be futile; it may be mischievous.

3. No. As already stated there has been no change.

4. On economic and also to a certain extent on hygienic grounds marriage is being put off now to, not beyond 13, but certainly beyond 10 or 11. "Public opinion" there is none in the matter, except among a very limited number of people.

5. Between 12th and the 13th year.

6. Soon after puberty. I don't think cases come to court.

— 7. The motive behind early consummation is in the main purely religious. The old Hindus wished to have as many sons as possible and therefore did not like to miss a single chance. That is how the practice started and the law-givers made it a very severe offence to miss a single chance. Even now the religious motive is patent. The penalty for missing such chances is heavy. It is said to be a grave offence for a Hindu, almost as grave as a murder. If one were not to try his best to beget children there would be no justification for his marrying at all;—the begetting of sons being the sole purpose of marriage.

8. Yes; generally it is performed immediately after puberty.

9. Medical authorities, even ancient Hindu ones, do not encourage such consummation on physical grounds. The ancient Hindu physicians have declared that a child born of a mother before 16 and father before 25 is bound to be short-lived.

10. This would depend upon the environment in which the girl has been brought up.

12. As a layman I do not think early consummation is conducive to maternal mortality or infantile mortality either, except in so far as might be due to the inexperience of the girl-mothers.

13. As I have already said before, there is no public opinion in the matter among the people in general. They do not know of even the existing law and the little public opinion that there is against such interference in socio-religious matters.

14. Yes; but the opinion is slowly and steadily growing towards the postponement of consummation.

15. So long as the system of the registration of births and deaths is not perfected there will always be difficulties in determining the age of girls or even of boys. This difficulty is aggravated by the fact that the physical development of girls in proportion of their age varies in various communities.

16. No; for reasons stated above.

17. Certainly; because in the case of marital offences there is the religious motive behind the act which should minimise the gravity of the offence. In either case the punishment should be deterrent and in *extra-marital* cases I would put the age of consent at the attainment of majority by the girls which I suppose is 18 years.

18. In the interests of respectable families marital offences should be tried *in camera* and the punishment should always be in the shape of a fine; whereas in the case of extra-marital incidences the trial and the punishment should be made as deterrent as possible.

19. In the case of marital offences I would suggest that action be taken only on the complaint of the girl's parents and it should not be what is called cognizable by the police on their own account.

20. The two cannot be separated. The opinion against a higher age for marriage is based upon the same religious injunction that lays down the necessity of taking advantage of every chance for the begetting of a child. That is the reason why post-puberty marriages are opposed to Hindu religious injunctions. The two are so inter-related that in the matter of legislation they cannot be separated.

21. As I have already said the strengthening of the Penal Law will never succeed in securing the object in view; its only result will be some trouble brought upon the people by frivolous complaints made by their neighbours. Social reform, and all the more, socio-religious reform, can be really successful only by means of education and social propaganda, not by means of legislation or compulsion of any kind.

Oral Evidence of Mahamahopadhyaya Dr. GANGANATHA JHA, M.A., D.Lit., LL.D., Vice-Chancellor, Allahabad University, Allahabad.

(Allahabad, 15th January 1929.)

Chairman: Are you the Vice-Chancellor of the Allahabad University?

A. Yes, I have been the Vice-Chancellor for the last six years.

Q. Were you the principal of the Sanskrit College, Benares, before?

A. Yes.

Q. Do you think that opinion is slowly and steadily growing towards postponement of consummation?

A. Yes.

Q. Do you think that this is on account of the realization or consciousness of the evil effects of early consummation?

A. It is very difficult to speak of the causes that are tending towards it. I think people are getting conscious of the evils of early maternity.

Q. 16 and 25 are given by you as the opinion of old medical authorities. Would you consider this as binding on the Hindu society to-day or not?

A. Certainly it is binding, but I would like to lower the age of the man.

Q. Would you keep 16 for the girl for *garbadhan*?

A. Yes.

Q. What age would you fix for boys?

A. Between 20 and 25.

Q. But don't you think that to-day Brahmacharya is less essential than it was in the medieval times.

A. It is more essential now.

Q. Are you of opinion that there are religious texts enjoining marriage before puberty and consummation soon after puberty?

A. Yes.

Q. Do you mean to say that probably the motive behind that is to have progeny at any cost?

A. Yes, that is the object of the injunctions.

Q. Are you aware of the fact that to-day people would rather have as few progenies as possible and not have many children?

A. I don't know if that is the tendency throughout the country. Amongst the educated people there is that tendency but I am speaking here as a villager pure and simple. In the villages I don't think that there is any such tendency. Whether they have anything to eat or not they want children.

Q. Don't you think that the economic conditions come in the way of the people?

A. Perhaps amongst the educated people that feeling has come in but not amongst the uneducated people or amongst the villagers.

Q. Are you aware of the text which lays down a prayaschitta for a girl attaining puberty before marriage?

A. Yes, there are very many texts.

Q. Do you think that there is a prayaschitta for a husband not going to his wife during the menstrual period?

A. There are texts to that effect.

Q. Do you think that if the prayaschitta is performed the sin disappears?

A. The whole question is in the efficacy of the prayaschitta. The authorities are divided. Some say that the sin is washed off and others say it is not so. There is a difference of opinion on the point as to what are the effects of the prayaschitta.

Q. May I understand that you recommend social propaganda and no legislation for attaining the ideal laid down by Ayurveda?

A. Yes. When I make this assertion I have the villages in view.

Q. Will you give us details of those conditions which make you say like that?

A. In the first place especially in all the higher orders of society it is practically impossible to determine the age of the girl. Secondly if you have a penal legislation it will either have to remain a dead letter as the present age of consent law is; or if it is made at all effective; it will lead to a lot of harassment and mischief. Thirdly there is the question of agency of prosecution. Who is to prosecute in the villages?

Q. As to prosecution I would mention what has been suggested by other witnesses that the marriage is to be recorded by the same authority who registers the births and on finding that the age has been exceeded, the authority will make a report direct to the magistrate who will make a preliminary enquiry before issuing a summons.

A. That pre-supposes that there should be a perfect birth registration and marriage registration.

Q. Don't you think that it is so?

A. I don't know how many years it will take to obtain that.

Q. Supposing if that was accomplished, will not one difficulty disappear?

A. Yes.

Q. As regards the reporting agency what do you say?

A. My own opinion is who is to be held responsible? It will be very difficult to secure a headman who would be suitable and who would be relied upon as a prosecutor.

Q. What is your fourth difficulty?

A. The fourth difficulty is that this reform by legislation will not be so effective as reform by propaganda and other movements. In our community in Bihar, the Maharajah of Darbhanga is the head. Our community is a limited community. There are only 1,000 male persons and no marriage can be performed without his written permission. We are called the Shrotriyas amongst the Maithil Brahmins. The Maharajah has laid down a rule, of course with our consent, that 16 is the marriageable age limit for boys and 7 or 8 for girls and he has nominated 3 persons in every village to certify age. Even then with this low limit there are all sorts of subterfuges everywhere, so if you legislate about this matter it will lead to a lot of troubles.

Q. Do you mean to say that efforts at determining the age made by the Maharajah of Darbhanga have been so far more or less fruitless?

A. They have not been fruitless but the system has been effective only because the community is so very limited. When it is a question of a large community, the difficulties will be greater. We live within an area of 10 or 15 miles and every one knows the other, and there is not much room for fraud.

Q. Will the same objections apply to towns?

A. Not to the same extent because in the towns I find that there is some system of registration of births. In the towns the registration is better, and the system in force does not require much reformation.

Q. Do you think that the rules of Hindu law apply to *Dwijas* only or to Shudras also?

A. There is one thing with regard to the Hindu Law. The texts themselves differ so much that it is very difficult to reconcile them all and it is no wonder that was so because they were laid down at long intervals of times.

Q. Do you think that they were laid down for different times?

A. Yes.

Q. You don't believe that all were written down at the same time?

A. No. I say that there has been a regular evolution of the Hindu law.

Q. So far as the *Smritis* are concerned, are you of opinion that they have been changed from time to time?

A. Yes. Till the time there was the Hindu Brahmin power, Hindu law has been undergoing a change; but as soon as the Brahmins ceased to be in power further changes didn't take place. Otherwise there would have been constant changes. All the latest changes were introduced by the Nibandha writers. Their opinions are at times in variance with several texts.

Q. Have you any idea as to any instance in the vedic period showing the age at which marriages used to take place?

A. I cannot think of any, but I think from the rituals and other things that the girl was of such an age that she could understand the meaning of the mantras and the *Saptapathi*. In other words they show that the girl should be of a mature age to be able to understand the meaning of the mantras and their import.

Q. Have you come across any Vedic authority which shows or from which strong inferences can be drawn that there were in those times post-puberty marriages?

A. There may have been one or two cases but they cannot lead to any inference.

Q. Don't you know that Pandits now rely on these few instances and say that post-puberty marriage was the rule in vedic times?

A. Yes.

Q. But as you say, the interpretation differs and the inferences are too small for drawing any conclusion.

A. Yes.

Q. Do you think that the law of the Age of Consent upto 13 is broken in a good many instances in this part of the country?

A. Yes.

Q. Does consummation take place immediately after puberty?

A. Even before puberty consummation takes place, in Bengal and Bihar. I don't know the conditions in United Provinces.

Q. Is it amongst the Maithil Brahmins that pre-puberty consummation takes place?

A. Yes. In the middle classes gradually the marriage age of the girl is being raised. Now the marriages before 10 are very rare.

Q. What about the lower classes?

A. Marriages take place at an early age amongst them nominally but they don't consummate them soon. In our parts the lower class girls are not sent before puberty. They don't send their girls before they are 16 or 17.

Q. Do you know of any community where consummation takes place necessarily after 17 or 18?

A. In Bihar the lower classes always do that.

Mrs. Nehru: Do you believe in the sanctity of pre-puberty marriages?

A. If we have any regard for the *shastras*, the religious ceremonies should be performed before puberty but I do not mean that consummation should immediately follow.

Q. Do you believe that early consummation or early motherhood is an evil?

A. I am not sure whether early motherhood is an evil because I don't think that question has been sufficiently impartially investigated. Of course this child mortality is sometimes attributed to early consummation but I don't think that anybody has yet investigated as to the percentage of this infant mortality. We do not know how many infants die in classes where there is no early marriage or early consummation.

Q. Even if you are of opinion that the progeny does not suffer, do you think the mothers remain healthy?

A. Yes; I am afraid what brings down the women is the large number of children they have got to bear. I think it is more often the later children that cause injury to the mother than the earlier children.

Mr. Yakub: What about the children who you say were born at 12 and 14? Do they live their natural life?

A. Yes; they live as long as their parents live.

Mrs. Nehru: Do you believe that early marriage interferes with the education of the boys?

A. Yes; it does.

Q. Would you like to stop early marriage on account of that?

A. Yes; I would not like boys to be married before 20 or 22.

Q. And girls?

A. 12. Manu has fixed 12 for girls and 30 for boys. The rest I would like to secure by means of propaganda.

Q. Do you not think that we have been doing propaganda work for the last so many years and it has not been effective?

A. I do not think there has been any propaganda work worth the name. You have been simply delivering lectures.

Q. Then what are the measures which you would suggest?

A. It is very difficult. But what I meant was that in order to get at the real thing, you must work with the people and try to ingratiate yourself with the people. On the other hand the propaganda that is now being done is being done with a superior spirit on the part of the people who do it. They seem to assume that their listeners are all fools, and that they should do things in the way in which the propagandists want them to do. I do not think that that sort of thing will appeal to people in any walk of life. You have to work with them.

Q. Has the progress so far made towards late marriages been satisfactory?

A. It is not yet satisfactory. But there is a tendency towards it. If it goes on that way in course of time it will become satisfactory. These things take time to take root. It is only when they have taken root that the effects are permanent; a forced growth is never healthy.

Q. How many years do you think it will take?

A. In a country like ours it is difficult to say. It may take 50 or even 100 years.

Q. If social legislation is resorted to for facilitating or advancing the rate of progress, have you any objection?

A. My fear is that social legislation will retard rather than facilitate progress.

Q. Why?

A. It will create a feeling against this sort of reform.

Q. Can you give us any instances in which social legislation has produced bad result?

A. For instance there was no outspoken opposition against the raising of the age, but now there is a strong propaganda in the country against it?

Q. Do you think if propaganda is carried on intensely and severely it will not give rise to a counter-propaganda?

A. It will have an educative effect which legislation will not have.

Q. But at the same time you say that legislation will give effect to counter-propaganda. How will it do so?

A. It will give rise to a rebellious spirit. People will say "Here are new-fangled people going to assert their power against our time-cherished notions and religion". It will arouse this sort of rebellious spirit.

Q. If the majority of people believe in the sanctity of pre-puberty marriages and early consummations it will be so. But if the majority do not believe in it what will happen?

A. Then they will neither need propaganda nor legislation.

Q. Do you not think that for the minority there may be need for legislation even if the minority opposes it. If there is a majority of people in the country who are against social legislation then perhaps it would be difficult to practise it or there will be this spirit of resistance which you are talking about. But if there are only a few people, do you not think that this spirit will die a natural death?

A. You are putting in an *if*, but that is a big "if". We do not yet know what the view of the majority is.

Q. Can you suggest any definite means of making propaganda which you think would be successful in rooting out this evil?

A. You will have to bring home to the people the evil effects of early marriage.

Q. I think we have been doing that sort of propaganda for a very long time from the time of Raja Ram Mohan Roy and others.

A. But you have been doing it only in the cities.

Q. In the cities do you think the result has been successful?

A. More successful than elsewhere.

Q. Has the result been satisfactory?

A. These habits of the people have been there for thousands of years, and you cannot eradicate or alter these practices in a hundred years' time.

Q. Do you think we should wait till things take their own course?

A. You have to wait if you want the reform to be real.

Mr. Mitra: Do you really wish that consummation should take place when the girls attain their 16th year?

A. That might be from the medical point of view. But I would put marriage at 12, and would suggest that Goana should be postponed till the 14th year. Consummation might take place in the 14th or 15th year.

Q. Do you not think it will go against the texts? Do you not think there is a large class of people who believe in the Shastras and say that consummation should take place immediately after puberty?

A. I suggest a compromise between the medical and legal authorities.

Q. Do you not think that there are men who sincerely believe in the Shastras?

A. Yes; I see that difficulty.

Q. Do you think there should be exemptions in those cases, if a marriage law is enacted?

A. Something will have to be done in order to bring the two together.

Chairman: Can you suggest any method by which pre-puberty marriages might be allowed, and yet consummation till the desired age, say 15 or 16, can be postponed?

A. In most communities the girl is not sent to the house of the husband at the time of marriage.

Q. On that there is a difference of opinion. There has been abundance of evidence to show that girls are married at 12 or 13, and immediately after marriage the Goana ceremony is performed and the girls are sent to their husbands.

A. The practice now-a-days is that Goana is performed soon after puberty and the girls are sent.

Q. Therefore Garbhadhan does not extend beyond 13?

A. No.

Q. Do you think there is any method by which we can achieve our object, except by postponing marriage?

A. Yes; but marriage legislation will be repugnant to the feelings of most people. The Goana ceremony might be postponed, but even for that I would rely on propaganda.

Mr. Mitra: If 12 is fixed as the minimum age of marriage would that be acceptable to the Hindus?

A. I had Manu's text in view when I spoke of 12, but I realise that that there are many parts of the country where puberty takes place before 12.

Q. But do not the people think that marriages should take place before puberty whatever the age might be?

A. I had this also in view, namely, that 12 is the normal age at which puberty takes place.

Q. May we take it that if the age is fixed at 12 there will be no opposition?

A. Even if it is fixed at 12, my general objection remains. But apart from that I do not think the opposition would be so great if you fix the age at 12.

Q. Are you on principle opposed to legislation on social matters?

A. Yes; also on account of the practical difficulties.

Q. Even if it is expedient, would you oppose it on principle?

A. Yes; the principle on which I would oppose it is that our legislators have not so far been in sympathy with the general community. I think they are far in advance of the people.

Q. Supposing there is no interference by the State, but legislation is undertaken by your own representatives?

A. Yes; if they are my own representatives; but it is difficult to get my own representatives.

Q. Supposing you send representatives to a Dharma Sabha of your own and they make the change?

A. I am disgusted with these Sabhas. I do not have much faith in these Sabhas and counter Sabhas.

Q. Is there any way by which we can have legislation? The ancient texts are by themselves a kind of legislation. Can you have such a thing now?

A. You can have any amount of Sabhas and opinions, but the sanction behind them must always be the sanction of the State. Otherwise it cannot be put into force. There are two Sabhas and they have passed resolutions. The Sabhas have disappeared and there is not much gain.

Q. Do you think we cannot constitute a body that can supply us with sufficient sanction?

A. In the present state of the country there is nobody which can do it.

Q. You say that there is a certain amount of manufactured dissatisfaction amongst the so-called advanced people. What do you think is the motive behind this?

A. Since the advent of English education it has been considered fashionable to decry all our institutions and to say that everything Indian is bad and everything non-Indian is good. I am afraid that is at the root of all this dissatisfaction. Of course there are more honest people coming up now.

Q. In paragraph 4 you say that marriage is being put off on account of economic as well as hygienic conditions. How is marriage put off on account of hygienic conditions?

A. I think it must be a mistake. I remember I referred to it in connection with infantile mortality.

Q. You say that the object of marriage is to have children. If you find that medical authorities are of opinion that if girls are married at a sufficiently advanced age there is a greater chance of their producing a larger number of children, will you not be recommending people to marry late so that the real purport of the Shastras might be fulfilled?

A. I would personally recommend consummation not before 15 or 16.

Q. You say that punishment should always be in the shape of fine. Do you think that even if the girl is below 12 and the result has been grave injury to the girl, even then the punishment should be fine only?

A. At the very outset I would not penalise anything at all. I am against any legislation on this matter, but if there should be legislation then the punishment should be in the way of fine only. I do not think that in such cases the husband should be sent to prison.

Q. Supposing the girl is below 12 and it results in personal violence?

A. Fine the culprit heavily.

Q. It will be a hardship only on the poor people, and it will not affect the rich people at all.

A. It is not hardship we are considering, but punishment.

Q. Will you make any distinction between girls over 12 and below 12?

A. I think it may be in the amount of fine.

Mr. Shah Nawaz: Do you feel that early marriage at 11 or 12 and early consummation at 12 and 13 is an evil?

A. I am not prepared to assert that. It may or may not be.

Q. Do you know that the Shastras say that a girl need not marry unless and until she finds a suitable husband?

A. The general trend of the Shastras is that the girl has not much choice in the matter.

Q. Do you know the text which says that the girl need not marry unless and until she finds a proper husband?

A. The Hindu Shastras are so very immense, and there are many solitary texts like this, and if there is such a statement it must be a very rare statement. The general rule is that the father is to marry the girl, and the girl has not much choice in the marriage. It is only after puberty if the father does not find a suitable husband for her that the girl should exercise her own choice and find her own husband.

Q. Do you not consider this a suitable authority?

A. That may be regarded in case the father has failed to marry her after puberty. It is only then that the girl is permitted to exercise her choice. The two texts should be read together.

Q. Is it not the spirit of the Shastras that the boy or the girl should not marry unless and until a suitable husband or wife can be found?

A. In the Shastras there are qualifications laid down for the bride and the bridegroom and the choice should be made accordingly.

Q. What do you mean by a proper wife? Is it not proper that the child wife should be able to read and write?

A. It is not amongst the qualifications of the girl.

Q. Should she not look after the household affairs?

A. It is difficult to say anything off-hand with regard to the Hindu texts; but I do not think it is one of the necessary qualifications.

Q. Do you not think that she should be fit for consummation and maternity?

A. Not at the time of marriage. For the age of consent puberty is the limit in the Shastras.

Q. Is it not a fact that you are against legislation in these matters because it is a social affair?

A. Yes.

Q. Is taking cocaine or drinking a social affair?

A. Yes.

Q. Then why am I run in for possessing cocaine?

A. You are run in for possessing cocaine because you may be doing harm to others.

Q. And smoking?

A. Yes; it does harm to children.

Q. Supposing you find that early marriage and early maternity do harm?

A. It is only a question of supposition.

Q. Are you of opinion that soon after puberty consummation does not do any harm. Supposing we do find that it is an evil, do you not think that the State must prevent social inequality and social injustice?

A. Yes; the State must prevent it if it can, but not prevent it and create fresh difficulties. That is my main objection.

Q. Has the State got power to prevent social injustice?

A. It has got power; but the question is whether it would be wise, in the present conditions of India, to exercise that power.

Q. Are the Shastric injunctions imperative or recommendatory?

A. So far as pre-puberty marriages are concerned, they are obligatory.

Q. How do you find whether a certain injunction is imperative or not. I find that the injunctions with regard to pre-puberty marriages and consummation of marriage after puberty are similarly worded?

A. Both are mandatory; pre-puberty marriages as well as post-puberty consummation.

Q. Do you not think that marriages are consummated in this part of the country before 16 years?

A. Yes; in this part of the country they are.

Q. Are you aware that many people are of the opinion that cohabitation soon after puberty is not mandatory?

A. It is mandatory, because it is said that if the injunction is transgressed one goes to perdition.

Q. What is the penalty?

A. It is a great sin.

Q. Then why are you for social propaganda if you consider that these are mandatory?

A. I am for social propaganda because I am born in this age.

Q. Do you think that these Shastras must be followed?

A. I think in the present state of the country we cannot entirely break off from the Shastras.

Q. Has not the penal code broken the Shastras?

A. Yes.

Q. How have the people taken it?

A. They will take any law, but with what effect it remains to be seen.

Q. Do you not think that public opinion is in favour of legislation?

A. I think it is not.

Q. What about the Women Conferences that have been held all over the country?

A. But by how many people have these conferences been got up? I think the members of these conferences are as much representatives of the ladies in the country as the members of the legislature are representatives of the masses of the people.

Q. Is it not the trend of the opinion of the educated classes at any rate that the age of consent should be raised?

A. Yes.

Q. Is it not also the trend that pre-puberty marriages must be stopped?

A. It is only amongst the English educated classes. The Sanskrit educated classes do not accept it and they do not subscribe to that view.

Q. Do they take their stand on the Shastras?

A. Yes.

Q. Do they reason it out?

A. Yes; if you discuss with them they reason it out.

Q. Do you not think that women should have a voice in the selection of their husbands?

A. If they are grown up women, they must have.

Q. Women generally?

A. If the girl is married before 12 she cannot have a voice.

Q. Can you reconcile the Shastras with the present trend of opinion?

A. I do not believe that it is the general trend that the women should have a voice.

Mr. Bhargava: You say that there are certain people who from the various texts of the Vedas draw the conclusion that post-puberty marriages were the rule. But you think that the material is not sufficient to warrant such a conclusion. May I know if there are any texts which would warrant a conclusion to the contrary, namely, that early marriages were the rule?

A. I cannot say. If you talk of the Vedic period, that raises the question as to what is the Vedic period. If you include the Grihya Sutras also in the Vedic period it is different. If you restrict the period to the Vedic texts only it is another thing.

Q. Can you find anything in the Vedic texts to warrant any conclusion?

A. I cannot say whether there are texts or not.

Q. Do you think that the Grihya Sutras support early marriages?

A. There are any number of pre-puberty marriages in the Smriti period.

Q. Supposing the Grihya Sutras were the only material before you would you say that the Grihya Sutras warrant early marriages?

A. The Grihya Sutras pre-suppose sufficient education on the part of the girl to understand certain texts.

Q. If you follow the Smritis the proper age of marriage is 8 to 12, and if you take the Grihya Sutras into consideration and the statement that you have made that the girl must be able to understand certain texts, am I right in saying that a girl of 8 to 12 years cannot understand the texts?

A. Of course a girl of 8 may not, but a girl of 12 may be able to understand them.

Q. Do you think that a boy will understand the texts?

A. The mantras that the girl has got to recite are very simple.

Q. So that it is your opinion that a girl of 12 can understand what it is to be a mother?

A. The trend of the Grihya Sutras is that the girl must be able to understand the Mantras that she recites.

Q. Does not that suppose that ordinarily she should be a mature girl?

A. If you are talking of the full implications, then even grown up women may not be able to understand them.

Q. Is there anything to warrant the conclusion that a girl of 15 or 16 can understand the full implications?

A. There is nothing to warrant that conclusion one way or the other.

Q. You are of opinion that when the paramount power was Hindu the Smritis were changing. If that is so may I know why you think there will be religious objection. The Smritis have been changing according to the customs of the times. Then girls of 12 were giving birth to children.

A. Why do you consider that a girl of 12 giving birth to children is an evil?

Q. Do you not think it is an evil?

A. No; I do not think it is an evil.

Q. Then why do you think there should be propaganda?

A. Supposing it is an evil, then I say that the corrective is only propaganda. It is a moot question to my mind whether motherhood at 12 is really the cause of all evils.

Q. I do not say that it is the cause of all evils. If you regard it as an evil sufficiently bad, would you agree with me that the very fact that there are mothers at 12 or 13 requires some remedy?

A. No; I am not prepared to go so far as that.

Q. Supposing all the medical witnesses that have appeared before this Committee think that if a girl becomes a mother before 16 and motherhood is followed by evil consequences to the mother as well as to the progeny, supposing this premise is agreed to, would you then agree that the time is ripe for a change to be brought about?

A. If that premise is correct, of course some effort should be made to remedy it.

Q. Then I would like to know if within a definite distance of time you can visualise a state of things when by mere propaganda you will be able to effect that?

A. It can be effected by the consciousness of the people themselves. There has been a change during the last 50 years.

Q. Previously when the paramount power was Hindu, the changes were brought about by the Smritis which were regarded as authoritative texts. It is not open to prepare such authoritative texts now. Can you suggest any substitute to legislation which will be as effective as that?

A. I cannot suggest any substitute.

Q. Do you not think then that legislation is the only effective method?

A. Yes; but only if the legislature were in sympathy with the masses of the people.

Q. By sympathy do I understand that the legislature should make such rules as may be generally acceptable or be such as may not raise any resentment amongst the people?

A. Yes; or trouble or difficulty.

Q. Supposing the legislature comes to the conclusion that 12 will not cause great trouble and it will be acceptable to the majority of the people, will you advocate legislation?

A. You can lay down legislation; but to make it effective would be difficult.

Q. May I take it that you will agree to legislation but you want to eliminate all possible sources of friction?

A. Yes.

Q. Supposing as suggested by the Chairman, there is a Birth register and marriages are also registered. Then it will be open to the registering authority to report cases in which the law has been broken; and only such persons will be punished as are found guilty, and the punishment is not severe; would you then agree to legislation?

A. All this procedure pre-supposes a perfect system of registration of births and marriages.

Q. Supposing efforts are made to make them perfect?

A. If you can secure a perfect system of registration of births and marriages that difficulty will be eliminated.

Q. If these difficulties are eliminated are you in favour of fixing the age of marriage at 12?

A. Yes.

Q. Do you agree that the present age of consent at 13 is an interference with the texts?

A. No; post-puberty consummation is sanctioned in the Shastras.

Q. You say that the text which says that the girl should go to her husband as soon as she has attained puberty is mandatory. Supposing menses comes off at 11, do you not think that the law prevents consummation before 13?

A. To that extent the present law is an infringement of religion.

Q. Do you want to retain it?

A. It may be retained because it is a dead letter.

Q. It may be a dead letter, but do you not think it has an educative effect?

A. I don't think it has any educative effect, because many people do not know the law.

Q. Supposing it is brought to their notice, will they break the law?

A. They will break the law, but they will say that the girl is over 13, and get over the law.

Q. Supposing the practical difficulties you mention are removed?

A. Then of course you can have any legislation you like.

Q. You say that the law of marriage and the law of consent are inter-related, that they cannot be separated. Do you think that a boy of 14 and a girl of 12 or 13 have any idea that they are going to procreate a child? You say that the injunction lays down the necessity of taking advantage of every chance for the begetting of a child.

A. I am not thinking of these rare cases, but of cases of men of 18 or 20.

Q. Do you think that a boy of 18 has a desire to have a son at that age?

A. That is generally the motive. It is not only the motive but is the only justification for the act.

Q. If that is so, do you not think that you must fix the age at such a figure, when people have got that desire. Do you think that a boy of 14 and a girl of 12 have that desire?

A. You cannot say. If a boy is told that it is the duty to procreate a child, the motive may be there.

Q. Supposing a rule is made by the educational authorities that a boy, if he is married, will not be admitted in the schools, will you agree?

A. Yes; because there is no hardship there. I think it will have a much better effect than any amount of penal legislation.

Q. You say that the greater the publicity given to the proposal and the consequent agitation the greater the chances of such frivolous complaints. Have you got any experience of these frivolous complaints?

A. At present the villagers do not know that there is such a law and that they can bring charges against their neighbours.

Q. Supposing they know it?

A. They will bring complaints.

Q. What do you think is the percentage of such false cases in other respects?

A. I do not know, but I know that there are many such frivolous complaints.

Q. Is there any offence in relation to which false complaints are not made?

A. But then why should you add one more?

Q. Supposing only the age of marriage is increased, and no other thing, do you say it will be an interference with the religious susceptibilities of the Hindus or Mussalmans?

A. If you make the age of marriage 16 or 18, it will interfere with the religious injunction that the marriage should be before puberty.

Q. What will be the social objection?

A. In Hindu societies marriages generally take place before 12. I suggested propaganda because it comes from within. But by legislation you will be doing from without.

Q. In 1891 was not the law amended on these very grounds?

A. That is why it is a dead letter. If you want this law also to be like that you can have it.

Q. What is your warrant for saying that the existence of the law on the Statute Book is not one of the reasons for the present state of things?

A. Many people, especially those in the villages, do not know the law, and as such the effect could not have been because of the law.

M. Yakub: When were these injunctions about early marriages inserted in the books of the Hindus?

A. It is difficult to say.

Q. When were the Smritis written?

A. It is difficult to say; in the Smritis 12 and 8 are laid down as alternatives.

Q. Can you say when the Gaona ceremony was provided for?

A. It is a custom.

Q. If a law were passed to this effect, that in cases where marriages are performed, the Gaona or nuptials should not be performed until 16, do you think it will achieve the object we have in view?

A. That will apply only to the communities where you have the Gaona ceremony. But there are other communities where the girl goes to the house of the husband at the time of marriage, for instance amongst the Bengalis. How can you prevent such cases.

Q. Is it also a religious injunction that the girl must go to the house of her husband after marriage?

A. In some places it is a custom.

Q. Then it cannot be a matter for grievance.

A. As regards the enforcement of this law, there will be no religious objection. But there are practical difficulties.

Q. What is your experience as Vice-Chancellor of the University, in cases in which boys are married late? Do you think there is any risk of their becoming immoral?

A. My experience has been very agreeable in that respect. The level of morals amongst our boys is very high. As for bad habits, even married boys fall into bad habits.

Written Statement, dated the 13th August 1928, of Mr. JAGANNATH PRASAD SHUKLA, Vaidya (Ayurvedic Panchanana), Allahabad.

2. (2) The Age of Consent in section 376A should be increased to 16 years. Before that age the uterus (Garbhashaya गर्भाशय) of Indian girls is not fully developed and sexual intercourse before that age is bound to have a very injurious effect on the health of both husband and wife. From my own experience I can confidently say that the child born as a result of such intercourse is generally very weak and short-lived. Vagbhata, the ancient Ayurvedic writer says:—

श्लोक ।

पूर्ण षोडशवर्षा स्त्री पूर्ण विंशेन संगता ।

शुभे गर्भाशये मार्गे रक्ते शुक्लेऽसिले हृदि ॥ १ ॥

वीर्यवन्तं सुतं सूत्रे ततो न्यूनाब्दयोः पुनः ।

रोग्यस्यापुत्रधन्यो वा गर्भो भवति नैव वा ॥ २ ॥

4. The amendment of 1925 has not at all been effectual in protecting married girls against cohabitation with husbands within the prescribed age-limit. Propaganda work should be undertaken in right earnest by the Public Health Department by means of lantern lectures, pamphlets in vernacular and cinema shows, etc. Vaidyas, Hakims and Doctors should be requested to co-operate in the work. Propaganda work is essential and must be taken in hand without delay as the public is ignorant of the blessings of these precautionary measures.

5. Amongst vegetarians the age of puberty is about 11; but in the case of communities taking meat, fish and wine, the age of puberty is about 12.

6. (i) Cohabitation before puberty is common to some extent amongst low-caste people.

(ii) It is common soon after puberty amongst all castes. But practically no case comes before court until it is brought to light by especial circumstances.

7. In almost all the Smriti granthas, e.g., Smrities by Manu, Yajnavalka, Parasara, etc., it is written that a girl should be offered in marriage before the attainment of puberty or else the parents have to undergo expiation for the same. If the girl is not married within three years of the date of puberty she is at liberty to choose her consort herself. But there is no such injunction for boys to be married at any particular age. As after the Sacred Thread ceremony at the age of eight, a boy is required to study for

at least twelve years. So the age of his marriage in usual course comes to twenty. But according to some Acharyas the Sacred Thread ceremony may be celebrated even before the age of eight and in these cases the consummation of marriage may be less than twenty; but in no case cohabitation is justified before the age of twenty.

8. Gauna ceremony is generally in vogue in these provinces. It is more often celebrated after the consummation of marriage and the celebration of Gauna and marriage together is also permissible. Garbhadana is not a synonym for Gauna. Gauna may be performed before the age of puberty, but puberty must precede Garbhadana.

From the religious point of view Garbhadana ceremony should be performed according to convenience after menstruation but from the view-point of Ayurveda a respite of three years should be given after the first menstruation for complete development of the Garbhashaya so that the progeny may be healthy and long-lived.

9. It is only an indication of the girls entrance into womanhood. The consummation of marriage may be effected before puberty; but Garbhadan in no case should be permitted before a period of three years elapses after the first menstruation. The consummation of marriage does not necessitate or involve immediate Garbhadan. Details about marriage, Gauna and Garbhadan have been given in questions Nos. 7 and 8.

10. Three years after the first menstruation, say, sixteen years.

11. I have come across several cases during my practice of 20 years in which cohabitation with girls before the age of sixteen years resulted almost invariably in weak and short-lived progeny. The healthy mothers also suffered very much.

Acharya Susrutu also supports this in the Samhita after his own name. His words are as under:—

ऊनषाड्गवर्षायामप्राप्तः पञ्चविंशतिम् ।

यद्यधत्ते पुमान् गर्भः कुक्षिस्थः स त्रिपद्यते ॥

जातोवान् चिरं जीवेज्जोषेद्दुर्बलेन्द्रियः ।

तस्मादत्यन्तबालायां गर्भाधानं न कारयेत् ॥

According to the extract given above Sushruta fixes the age of cohabitation for males and females at twenty-five and sixteen respectively; but Acharya Vagbhatta, who followed him, agrees with Sushruta to the age of females but the males according to him may be allowed cohabitation at the age of twenty.

12. Certainly.

13. The educated classes of people except the strictly orthodox and the conservative have appreciated the amendment of the law in 1925; but the public at large is not acquainted with these amendments as no measures are adopted to bring these matters home to them.

14. On account of lack of education women do like early marriage. They lack foresight.

20. Legislation fixing minimum age of marriage would be more effective and would be more in consonance with public opinion in these provinces.

21. Strengthening of penal law would not be sufficient to secure the object in view. Social reform by means of education and social propaganda should also be undertaken, simultaneously, so that young men and women may realise the great harm which results from early marriage and early cohabitation.

Oral Evidence of Pandit JAGANNATH PROSAD SHUKLA, Vaidya, Allahabad.

(Allahabad, 15th January 1929.)

(Vernacular.)

Mr. Kanhaiya Lal: For how long have you been practising?

A. 20 years.

Q. Have you been practising in Allahabad or anywhere else?

A. I am practising in Allahabad, but I go in the villages also.

Q. Have you been connected with Ayurvedic Conferences or other Ayurvedic institutions in the province?

A. I was President of the All-India Ayurvedic Conference in 1924. I was a member of the Ayurvedic and Unani Committee appointed by the United Provinces Government in 1924. I was a General Secretary of the Ayurvedic *Vidya Peeth* examinations for about 6 years. I also presided over the United Provinces Ayurvedic Conference in 1918. I am Vice-President of the All-India Ayurvedic Conference, United Provinces, and of the Ayurveda Pracharni Sabha, Allahabad. I am also editing an Ayurvedic Journal called *Sudhar Nidhi*. I have written several Ayurvedic works.

Q. Have you come across any cases in which young girls got injuries on account of early consummation or early maternity?

A. Yes. There was a Brahmin girl, she was married at 12. The husband was 26 or 27 years old. She got consumption.

Q. How long after marriage did she get consumption?

A. A few months after marriage.

Q. Can you say that she got consumption because she was sent to the husband early or was there any other cause?

A. I think there was no other cause. 8 or 10 years ago another case happened. A girl of 12 was married, she got a child at 14. She had no milk and she was ill for some months. She was very weak. Now she gets children but there is no milk, the children are very weak.

Q. What remedy do you suggest for this state of affairs? There are two alternatives, either to fix the age of marriage or Age of Consent. Which of these would you prefer?

A. I think marriage age should not be fixed above 12 because Dharma Sastra says that there may be pre-puberty marriages. Puberty generally takes place between 12 and 14. The Age of Consent should not be fixed at less than 16. Vagbhat in Ashtang Hriday recommends that marriage should not be consummated till a girl is fully developed and that is not before 16 complete. Sushrut has said that a girl should be married at 12 and consummation should take place at 16. I recommend that.

Q. Supposing marriage takes place at 12 and consummation takes place at 16, how can they be kept separate for 4 years?

A. The ceremony of Gaona should not take place.

Q. Does the ceremony of Gaona take place generally?

A. Yes.

Q. What is the usual age of marriage among the lower classes?

A. Between 3 and 4 or 5 and 6.

Q. And among the higher classes?

A. From 8 to 12.

Q. When does Gaona take place?

A. It takes place one or three years after marriage.

Q. Does it take place before puberty?

A. No. One year is laid down in Dharma Shastra.

Q. Does consummation take place before puberty?

A. No. According to the Dharma Shastra there is a ceremony of *Ritu Shanti* and then *Garbhadan* takes place.

Mr. Bhargava: Is *Gaona* according to the Shastras?

A. Yes. *Dwiragaman* is given in the Shastras.

Q. One Pandit at Benares told us that it was referred to in *Jyotish Grantha* (astrological works) only and that was 300 years ago. It is not given in any other Dharma Shastra?

A. No.

Q. During the Vedic period *chaturthi karma* used to take place on the 4th day after the marriage. Does it not mean that the age of the girl was such that she was fit for consummation after the marriage?

A. It takes place on the 4th day after puberty.

Q. But it used to take place on the 4th day after marriage. How long after marriage does it take place now?

A. There is a ceremony on the 4th day after marriage but consummation does not take place.

Q. In the Vedic period when it used to take place on the 4th day after marriage, it meant that the boy and the girl were of good age?

A. It is not so said in the Dharma Shastra. It is said that before puberty the father, mother or guardian of the girl should marry her and if he does not he commits a sin and if a girl is not married within 3 years after attaining puberty, she has a right to select her own husband. It is clear from that that marriage should take place at 12 or 13 and if it does not take place till 16, she has a right to select her own husband.

Q. I am asking about the time anterior to the Smritis?

A. A man should be married when he has learnt the Vedas, and he has a beard. The age of the girl is not written. It is said that she should be married before puberty.

Q. The man may be more than 20 years old when he has learnt the Vedas and he gets a beard.

A. It is not necessary.

Q. Does it not appear from the Vedas that unless a girl understands everything and unless she is fully developed she should not be married so that she may be able to understand the Mantras cited on the occasion?

A. That would not show that marriages used to take place at a good age.

Mr. Bhargava: If you fix the age at 14 you will obviate child-widowhood below that age. In olden days marriages of widows used to take place.

A. I do not want that anything should be done against the *Shastras*.

Q. How will you make the Age of Consent Law effective?

A. The law should be enacted and propaganda should be carried on.

Q. But how would you make the law effective?

A. By means of education. To go beyond puberty will be against *Shastras*.

Q. If you fix the age at 12 that will also be against *Shastras* because many girls attain puberty at 11 in Bengal and Madras.

A. The average age has been fixed at 12.

Q. Then at least in 40 per cent. of cases you will be going against the *Shastras*?

A. Yes.

Q. There are many people in Gujrat who believe that unless the "Devi" ordains no marriage should take place. Will you make a law for them?

A. I must know what their belief is. If it is something religious it should not be interfered with.

Q. Supposing all the Pandits say that in order to save the nation from evil consequences the age of marriage should be raised, would you agree to fix an age?

A. Yes.

Mr. Shah Nawaz: Is it not laid down in the Smritis that consummation must take place within 16 days of menstruation?

A. I don't know.

Q. Is this rule about marriage before puberty mandatory or recommendatory?

A. It is mandatory. No Smritikar has said anything against this injunction.

Q. Is there any Prayaschitta laid down?

A. There is a Prayaschitta but it is only for cases where marriage could not but be postponed. It is not that you may intentionally commit a sin and then perform Prayaschitta.

Q. Is it not laid down that a girl must be of good health and well-educated at the time of marriage?

A. It is. (The witness filed the attached extracts to support that.)

Q. The boy should see that the girl is healthy and well-educated and the girl should see that the boy is educated and healthy?

A. Yes. The girl must be "Sundar".

Q. How do you define Sundar? Do you think that a girl of 12 can understand marriage at all and look to the household affairs and receive education?

A. She can be educated after marriage.

Mrs. Nehru: In answer to question No. 14 you say "women lack foresight". Do you refer to any particular class of women or women in general?

A. I was referring to the uneducated only in this question.

(१) ब्रह्मचर्य के बाद विवाह

अनुत्वा मातामन्यतामनु पिताऽनु भ्राता सम्भार्यऽनु सखा सयूथः
सादेवि देव गच्छे होन्द्राय सोम रुद्रस्त्वावर्त्त यतु स्त्रिंशति सोम सखा
पुन रेहि ॥

(यजु० च० ४ मंत्र २०)

सम्बन्धियों को भाग्य लेकर

रुद्र = ब्रह्मचारी $\frac{४४}{११}$ वर्षवाला

मंत्र का अर्थ—(त्वा) तुझ को माता अनुमति देवे, इसी प्रकार पिता सगा-भाई, सम्बन्ध में रहनेवाला (विरादरो) सखा-मित्र अनुमति देवे, फिर तू रुद्र यानी चवालीस वर्ष के ब्रह्मचारी को "एहि" यानी प्राप्त हो—वरण कर।

(२) ब्रह्मचारी जवान विद्याप्राप्ति के बाद विवाह करे

ब्रह्मचर्येति समिधा समिधाक्वापेण वसानो दोषियो दोषं शमयुः
स सद्यपति पूर्वस्मादुत्तरं समुद्रं लोकान्मृग्य मुद्राचरित्त ॥

अथर्वकांड ११ अनु० १ मं० ६

अर्थ—जो ब्रह्मचारी मृगछाला धारण किये हुए प्राप्तदीप्त, विद्या से प्रशशित होकर, बड़ी बड़ी मूँछ-दाढ़ी संयुक्त हो जाता है, वह 'शोध ब्रह्मचर्याश्रम' से निकलकर गृह्याश्रमरूपी उत्तर समुद्र को प्राप्त होता है—

(१) युवा पति करे

ब्रह्मचर्येण कन्या १ युवानं विन्दते पतिम् । अनङ्गवान ब्रह्मचर्येण-
श्रौद्या संजिगीतत् ।

अर्थ—ब्रह्मचारिणी होकर युवावस्था में कन्या पूर्ण युवा पुरुष को अपना पति करे ; क्योंकि पशु भी सुनियम में रखे जाने से दुर्बल पशुओं को जीत लेता है ।

अथर्वकांड ११ अनु० १ मं० १८

Written Statement, dated the 28th August 1928, of Dr. KAILAS NATH KATJU, M.A., LL.D., Advocate, High Court, Allahabad.

1. The educated community is dissatisfied with the state of the law on the subject and desires that the Age of Consent should be raised.

2. I favour the raising of the Age of Consent on the ground that to attach any weight whatsoever to the consent of an Indian girl is really farcical. The age of minority in India is 18 and is in some cases even 21. The Indian Law regards any Act such as Contract or Transfer of Property on the part of a minor as absolutely void. The Privy Council has held that even if a minor by successfully misrepresenting himself to be a major induces another party to enter into a contract with him, even then the contract is void and the minor can subsequently plead the bar of infancy. It is to my mind startling that the law should on the one hand, on the civil side treat the consent of a minor as of no consequences but on the criminal side should regard it as a complete defence from the social and moral point of view of a criminal act. A girl just above 14 has no knowledge of the world. She may be illiterate and her consent may be obtained by cajolery or by undue excitement. She may not know the consequences of what she has been asked to consent to yet the law makes her consent material. The consequences of consent in a case of sexual intercourse may be far greater than the consequences resulting in the case of a contract by a minor. I see no reason why the law should make any distinction between the two cases.

I would propose that consent below 18 should be no defence whatsoever. Every one who seduces a girl below 18 recognises or ought to recognise that he is taking advantage of an unexperienced immature young person and he should thank himself if he is seriously punished for it.

3. Crimes of seduction or rape are not frequently reported. The parents of the girl to save the honour of the family try to hush up the matter. So far as reported cases go I cannot say that such crimes are frequent. According to the report on the administration of criminal justice in the province of Agra for the year ending 31st December 1927, the total number of cases reported during the year was 271, of these 186 were returned as true and the rest either as false or not proved. Out of these 186 cases, 174 were brought to trial. Altogether in the year 1927 including the 5 cases pending from the last year 251 persons were tried out of which 131 were acquitted and 120 convicted. These figures are not by any means large. I am unable to say that the amendment of the law made in 1925 has had any effect in preventing or reducing the cases of rape.

5. So far as I know about the age of 14.

8. Gauna ceremony is usually performed in the province of Agra. Generally it coincides with the consummation of marriage. It is performed generally after the attainment of puberty when the girl attains the age of 15 and in some cases even later.

9. I do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify the consummation of marriage. I think consummation should not be allowed before the age of 18.

10. Speaking from experience gathered by 20 years' practice in the law courts in the province of Agra, I think a girl in India is not competent to give an intelligent consent to cohabitation with a due realization of consequences before the age of 18. It is, of course, true that every Indian girl knows from experience gained in her own family and in that of her neighbours that motherhood comes even before the age of 18. But I am of opinion that very few girls realize the process by which that stage is reached or its consequences on their own health and that of their progeny. Female education is slowly spreading in urban areas but in rural parts of the country illiteracy among women is still prevalent. Having regard to the general standard of intelligence of the Indian girls of the rural classes, in my opinion it would be absurd to suggest that a girl can give an intelligent consent in such matters before she attains a sufficient mature age.

11. I have come across cases in which cohabitation after puberty but before full development of a girl has resulted in injury to her health. It has frequently led to the development of pulmonary and respiratory diseases which are unfortunately spreading in urban areas in the case of young mothers.

12. Yes. (See my answer to question No. 11.)

14. Among educated classes women do not favour early consummation of marriage of their children.

16. The margin of error whether the age be 13 or raised to 14 will always exist. Unless the age is raised by several years such as to 16, the difficulty if any in determining the age will not disappear. From this point of view I support Sir Hari Singh Gour's proposal to raise the age to 16 years.

17—20. These questions relate to matters of difficulty. A marital offence will never come to light unless the wife meets with death or serious physical injury in consequences thereof or unless there be some domestic dispute between several members of the family, leading one member of the husband's family or the relations of the wife to report the matter to the police. To encourage police interference in such cases would lead to an intolerable interference with the liberty of the people and result in all sorts of abuses. After a careful consideration, I am of opinion that legislation fixing the minimum age of marriage is likely to be more effective than penal legislation fixing a higher Age of Consent. There can be no effective method of taking

marital offence against the law as to the Age of Consent. Whenever and even whether such an offence is committed, the endeavour of all the members of the family of the accused would be either to hush up the matter or if it reaches the court to shield the accused by giving perjured evidence.

21. Along with a law fixing a minimum age of marriage I would prefer to secure the object in view by relying on the progress of social reforms by means of education and social propaganda rather than on the strength of the penal law by raising the Age of Consent in marital state.

Oral Evidence of Dr. K. N. KATJU, Allahabad.

(Allahabad, 15th January 1929.)

Chairman: How long have you been at the bar?

A. 20 years.

Q. Do you come into contact with people in villages?

A. Not very often.

Q. I understand that your opinion is that you prefer a law of marriage to a law of consent?

A. Yes.

Q. What is the marriage age that you propose?

A. 16.

Q. For boys?

A. Between 18 and 20.

Q. Do you think the law of age of consent could be worked by itself without a law of marriage?

A. I don't think so.

Q. Do you think there are inherent causes for its being ineffective or there are causes which can be removed to make the law effective?

A. I think it will be unworkable both on account of inherent causes and causes that exist outside the family.

Q. What are those causes that exist outside the family?

A. It will lead to intolerable persecution by the police if you make the offence cognizable.

Q. But if we make it non-cognizable?

A. Then nobody will ever report.

Q. You mean detection will be well-nigh impossible?

A. Yes. As it is even cases of rape in respectable families are not reported and are tried to be concealed and hushed up.

Q. Have you heard of cases of rape in good families not brought to light on account of shame?

A. I can't give you instances, that is my impression.

Q. You are in favour of raising the Age of Consent outside marriage to 18?

A. Yes.

Q. Supposing there was a law of Age of Consent what age would you propose?

A. If you say that you are going to legislate then it is very difficult to answer that question. It may be 15 or 16.

Q. Don't you think you would recommend the same age for marriage and consummation?

A. The difficulty would be that unless there was some method by which the husband and wife could be kept separate my impression is that the law

would become unworkable. My idea is that it is no use legislating when it cannot be enforced.

Q. Have you reason to believe that in this part of the country the law of Age of Consent is broken? Are there consummations of marriage below 13?

A. In the society in which I move and so far as I know from my professional experience I don't think there is any case of consummation below 13.

Q. What is your community?

A. Kashmiri Brahmin.

Q. But don't you think there are many other communities which have child marriages and among whom this law may be broken?

A. My idea is that apart from the Kashmiri community, amongst the people of urban areas, the Kysthas and Kshatriyas, the people with whom I am much acquainted, cases of consummation below 13 are extremely rare. I can't tell you much about the rural areas.

Q. But there are many other classes among whom early consummation takes place excepting the Kayasthas?

A. I don't know. Among the lower classes like the Kharas, Gaona takes place between 13 and 15.

Q. Do you know anything about *Kurmis* or *Ahirs*?

A. No.

Q. Do you know of any community amongst which marriages are performed usually after puberty at 16, 17 or 18 and no pre-puberty marriages take place?

A. Marriageable age is now rising in my own community, but speaking generally of the Hindu community I don't think it has gone beyond 16.

Q. What is the extent of the Kashmiri community here?

A. About 2,000 people. It is a very small community. There is cent. per cent. literacy. You are quite justified in saying that what prevails in the Kashmiri community is by no means an index of the prevailing customs in other parts.

Q. Have you reason to believe that this evil of early consummation is rampant in a very large portion of the population in this province?

A. I don't think so.

Q. When does marriage take place among the lower classes?

A. Marriages among the lower classes take place between 5 and 7.

Q. When does consummation take place; after puberty or before puberty?

A. I have not heard of any case of consummation before puberty.

Q. And among the higher classes in the United Provinces?

A. I don't think that consummation specially among the educated classes takes place below 14. My impression is that consummation generally takes place about 14. If you want me to give any specific instances I am unable to do so.

Q. Do you think there are any classes among whom pre-puberty marriage is essential?

A. That may be the opinion among the very orthodox people.

Q. But don't you think that the orthodox is a larger class?

A. Yes, that is quite right.

Q. So among a very large population there is that belief?

A. There is the practice of early marriage but I don't agree that there is the practice of early consummation.

Q. When do you think consummation takes place?

A. As I said about 14.

Q. Even then do you know of any case where a girl-mother has suffered on account of her being a mother at 14?

A. I can give you cases of girl-mothers suffering from diseases after child-birth.

Mrs. Beadon: What was the age of the girl?

A. 16 or 17 and the result was tuberculosis.

Q. But that may be due to anything else, bad feeding or strain caused on the mother's health due to the birth of three or four children. Can you give any cases in which after one child-birth there was any definite trouble apart from tuberculosis?

A. Cases have come to my knowledge where within one month there has been fever. After delivery the girl had slow fever within a month. After two or three months it was discovered to be a case of phthisis.

Q. What was the age of the girl?

A. 16 or 17.

Q. Was that the first child?

A. Yes.

Q. Was she weak in health or well-developed?

A. Average.

Q. Had enough of feeding in the home?

A. Yes. It was a fairly well-to-do middle class case.

Q. You know two or three cases like that?

A. Yes. That was all after the first child-birth above the age of 16 or 17.

Q. Do you know of any case of very early motherhood?

A. None has come to my knowledge.

Mrs. Nehru: Do you think the age of 16 which you propose to fix for marriage will be workable?

A. One thing that I lay emphasis on and what leads me to fix a fairly high age is to prevent the evil of child-widows. If you allow early marriages and then place some restriction on consummation below a prescribed age you will be putting the girl to an unnecessary risk of becoming a widow. The Widow Re-marriage Act in my opinion is, up till now if not a total failure, a failure to a very large extent and the girls should be protected from that danger.

Q. But the question is, will the people agree to it?

A. If the Government were strong enough I do not know why it should not be workable. If the Government being an alien Government would not like to take that risk that is a different matter. If the law were to be passed I think within five years it can be enforced.

Q. Even in villages you think people will know the evil consequences?

A. I think it will be workable to a large extent without any difficulty.

Q. Will you make the offence cognizable?

A. Yes, I would make it cognizable because I think the evil of child-widows is so serious that it ought to be stopped.

Q. Do you think there will be no police harassment if the offence is made cognizable?

A. I don't think that because matters can be easily proved.

Q. You think the age can be easily proved?

A. There will be some margin for error between 15 and 16, but you can say whether a girl is 12 or 16.

Q. But if you make it cognizable don't you give a handle to police? Don't you think people will be very much harassed. It will be very difficult to find out whether the girl is 15½ or 16, specially in villages, and the police would be in a position to trouble the people.

A. The law should be enforced, that is all what I mean. It can be made cognizable for some five years and we can see the results. If it is not enforced we can again make it non-cognizable. If it is cognizable you can get at the parents and stop the marriage being performed.

Q. If you make it non-cognizable who is to make the complaint?

A. In the villages I will give the right to the relatives, to the lambardars, to the patel or to the headman.

Q. But even there don't you think public opinion being against it, there will be difficulties in working?

A. My own idea is that if the law were made it is not a matter of such tremendous importance that the people would break it.

Q. What is your objection to the Age of Consent Law except that by means of marriage law you want to put a stop to child-widows?

A. It is very difficult to detect the offence. How will you prove the age? Would the girl be asked to undergo a medical examination? So far as marriage is concerned it can be stopped by extraneous causes also.

Q. If out of a 100 cases even 5 are proved by pregnancy or otherwise, wouldn't it suffice to have a deterrent effect on others?

A. I doubt whether it would have a deterrent effect.

Q. You can keep the husband and wife separate for the requisite period by means of bonds. The parents can be asked to execute bonds to keep the couple separate till the girl has reached the prescribed age. Then the celebration of *Gauna* can be stopped. Certain measures like that can be adopted.

A. But in the case of marriage law there will be difficulty in cases that are on the border line. The magistrate can otherwise easily find out whether the girl is 12 or 16.

Q. Will you accept the raising of the Age of Consent as a second best if marriage legislation is impossible or will you entirely reject it?

A. I should like to see what the definite proposals are. My own idea is that what should be tried to be prevented is early motherhood. I am not a doctor and I can't say what is the actual effect of the union between husband and wife if motherhood does not result. If motherhood results a girl probably of 16 or 17 is physically fit for that. My idea is it is much better to stop marriage till that age rather than allow marriage and prevent consummation till then.

Q. Will you accept it as the second best?

A. I should like to see what the proposal is.

Q. Supposing the Age of Consent is raised to 16 within marital relations and the right of complaint is given to certain vigilance committees or recognised social reform organizations?

A. I shall be against it because it will be intolerable interference with the liberty of the individual whether it is by committee, whether it is by the lambardar or whether it is by the police.

Q. Then your opinion is that even in case of no marriage legislation there should be no Age of Consent Law? .

A. Yes. It will be so unworkable that it is no use having it on the Statute Book.

Q. That is to say, you entirely reject it under all circumstances even if the law of marriage is not to be had?

A. My opinion is that the law about the Age of Consent will be so unworkable that it is no use enacting it.

Mr. Miya: In your marriage law are you ready to provide for exemptions under certain circumstances? Supposing there is an old man who has got a daughter and nobody to look after and he likes to see her married in his lifetime?

A. I shall exempt in that case.

Q. Secondly are you ready to permit early marriage in those cases where some orthodox man sincerely believes that he must marry his daughter before she attains puberty?

A. I won't accept that as a ground for exemption because there will be no limit to orthodoxy.

Q. Are you ready to permit those few cases where some orthodox people sincerely believe that they must marry their girls before they attain their age of puberty?

A. No.

Q. You know that there are really people who believe that their religion requires them to marry their girls before puberty. So would you not give them exemptions?

A. My idea is that they ought to change their opinion.

Q. Don't you like to provide exemptions for them?

A. I would like to provide exemptions in individual cases but not on the ground of orthodoxy.

Q. What punishment would you suggest for infringement of the marriage law?

A. I should insist upon prevention of the marriage otherwise imprisonment. If a complaint is made before a marriage is performed, I would provide that the Judge or the Magistrate should be entitled to stop the marriage otherwise if that cannot be done, the punishment should be by imprisonment.

Q. How are you going to prevent the marriage?

A. Everybody will know when it will be celebrated. There should be a marriage register. What I have in my mind is a case that came to my knowledge. In that case the District Judge was moved and he took steps by issuing orders to prevent the marriage from being celebrated. That was a Court of Wards case. In this part of the country if a marriage is to take place, there are so many things done before that. The date is fixed, weeks if not a month before, then invitations are sent, and people assemble and so on. But what I personally think is that everybody will be determined to break the law and there will be secret marriages. My idea is that if you make some rule, probably the secret marriages will not happen.

Q. Do you suggest that a notice should be given before the marriage is performed?

A. Yes.

Q. Is there much police harassment now?

A. I have no experience of this.

Q. Do you know of any cases of harassment?

A. No.

Mr. Shah Nawaz: Don't you think that a considerable number of girls, say, from amongst the lower classes, will go wrong if they are not married before 16?

A. I am unable to answer that question.

Q. Have you come across many cases of kidnapping of girls below 16?

A. I haven't had this type of case myself but I have read about cases of this sort in the newspapers. But I don't think personally speaking that the law of marriage will have any great effect. I mean if there is a girl under 16 she either lives under the protection of her father or under the protection of her husband. You may say if you want that the protection of the husband is more effective than the protection of the father.

Q. But do you recognise the fact that the girls of the lower classes when they go to the fields, are not under the protection of their parents for the time being?

A. Or of the husband either.

Q. Do you think that there will be no danger if they are kept unmarried for such a long time?

A. No.

Q. Don't you think that it is rather a sudden jump to go to 16 and it will lead to some sort of serious agitation?

A. I say that my idea is that girls should be of such an age that no danger or injury should result to them or the child-widows may be fewer. You may put it if you like a little less, say, 15.

Mr. Bhargava: So far as the extra-marital cases are concerned, am I to understand that you are in favour of raising it to 18?

A. Yes.

Q. If you raise it to 18, will you also think it proper to raise the age under section 363 to 18?

A. Yes.

Q. You were just speaking about the District Judges entertaining applications. Have you come across any legal flaw in the authority of the District Judge issuing injunctions against the father also in a case where the father gets married his minor girl and then a relation comes to the District Judge and makes an application in the interests of the minor praying that the marriage should be prohibited?

A. I have not come across such cases because the jurisdiction to the District Judge will only be given if an application for guardianship is made. There may be cases where if the Judge is satisfied that the father is giving the girl in marriage with an ulterior motive, he may interfere. But no such case has come to my knowledge.

Q. But do you think that the present provision is quite enough to combat this evil?

A. If the committee accepts my suggestion about fixing a law of marriage, I would certainly make a supplementary provision in the Guardians and Wards Act that it may be open to any relation if he comes to know that the father is going to break that law, to apply to the District Judge and the marriage can be stopped by the District Judge.

Q. Don't you know that the Judge cannot interfere with the parental authority?

A. But if there is a law to the effect that no marriage should take place before 15, then I would suggest that a section might be introduced in the Guardian and Wards Act by deleting the words "in the interests of the minor" and adding the words "if it is below a particular age and so on....."

Q. Do you think that according to law, the husband is a better guardian than the father?

A. Yes.

Q. If you are raising the Age of Consent or if you are fixing the minimum age of marriage, would you then like that this law of guardianship also should be changed in favour of parents as against the husband up to the age of 16?

A. Yes.

Q. Are you of opinion that generally the headman or the patwari or some other persons may be authorised to report breaches of the marriage law?

A. Yes.

Q. Would you like that an obligation as contained in sections 44 and 45 be placed upon the village officials so that in all cases whenever they come to know of a breach of the marriage law, there may be a duty upon them cast by law that they must report the matter?

A. I would rather accept the suggestion which was made by one member that there may be a duty on the parents to notify the celebration of an intended marriage.

Q. You know that in villages the duty of reporting births and deaths is on the chowkidar. Would you prefer that this may continue as it is or some obligation may be placed upon the parents also?

A. I would place the burden of reporting upon the parents, provided you have some authority in the village to whom the report may be sent. The system of the birth report in this province works very well because such matters come to the court and we find that the registers are reliable.

Q. Do the Patwaris keep the registers here?

A. No. The chowkidar makes a report to the thana and the report is kept in the thana and he also keeps his own register.

Q. Are all the registers relating to the mutation of lands kept with the Patwari here?

A. The Punjab system does not prevail here.

Q. Are there Patwaris in every village?

A. Yes.

Q. Is the Patwari to record the marriages or is he to report the marriages to the higher authorities?

A. My idea is that the Patwari should report the marriages.

Q. Will there be a corresponding obligation on the parents to report to the Patwari?

A. Yes.

Q. Supposing there is a consent law, will you prefer that the law should make a presumption that whenever the husband and wife are proved to live together, sexual intercourse has taken place?

A. I don't accept it.

Q. According to you it is a secret act and the wife will be always an unwilling witness. The parents will be interested in defending the parties and evidence may not be available. This will be a rebuttable presumption but as a rebuttable presumption, it may do some good.

A. Before the presumption can arise, the facts will have to be proved that they lived together, which, under the circumstances, would give them an opportunity of consummation. Such a thing can safely be said in 99 cases. But having regard to the economic and poverty-stricken conditions of the people if you were to say that the mere fact of their living together in one room raises a presumption, the presumption would have to be raised in every case and cases of difficulties may arise.

Q. It may not be a conclusive presumption but it will be a rebuttable presumption.

A. Then it will be reversing the whole Criminal Procedure Code.

Q. In marital cases will you make the offence compoundable or not if the girl is above 13?

A. No.

Q. Would you like that the commitment stage may be also kept in these cases?

A. I will make it triable by a first class magistrate.

Q. Supposing there is no marriage law and there is only a consent law, would you like that some provision should be made on the lines enacted in section 107 of the Criminal Procedure Code to the effect that the magistrate if satisfied with the commission of such an offence, then he may call the parties and ask them to separate the husband and wife and take bonds from them as a preventive measure?

A. I would rather not go in for it because it will be unworkable.

Q. I want you to say whether this is unworkable because the entire law is unworkable.

A. Therefore I say don't legislate, because the entire law is unworkable.

**Written Statement of Dr. S. K. MUKHERJI, L.M.S., Rai Bahadur,
Member of the Executive Committee of the Allahabad Maternity
and Child Welfare League.**

1. There is much dissatisfaction with the state of laws as to the Age of Consent as contained in sections 375 and 376, Indian Penal Code. The consent of a minor at 13 or 14 years of age cannot be regarded a valid consent because she is not mentally capable of giving any such consent.

The criminal cohabitation of a husband with his immature wife must however be distinguished from "Rape" by a man who is not married to the girl. This last is certainly a much more serious offence against society. To class the two together takes away from the dignity of the law in the eyes of the public and is stigmatized as an absurdity of the present-day made laws.

2. The circumstances which justify making an advance on the present law are:—

- (a) No girl at 13 or 14 can realize the import and consequences of the sexual act. They are mere children and minors in the eyes of law. As such their consent is a child's consent to play devoid of any appreciation of ulterior consequences. It is very curious that a girl below 18 is held by law to be incapable of attesting any document, transacting any business and looking after her money and property, still that same person could legally give her consent for a physical act which often mars her own life and that of her progeny and degrades the whole race.
- (b) At 13 or 14 her constitution is immature, her parts are small and undeveloped and liable to injury.
- (c) Any progeny from her is bound to be weak and defective.
- (d) Consummation of marriage at 13 or 14 tends to promote an uneconomic growth of population. Weaklings, defectives, undesirable, unhealthy and stunted people who are unfit for the struggle of existence.
- (e) Raising the Age of Consent is bound to raise the marital age. Raising the age to 18 would control and check if not wholly prevent the rapid uneconomic growth of the population and poverty in the masses, besides it would solve the problem of child-widows in India.
- (f) Under present conditions the education of girls suffers on account of the tender years at which they are married off and cease to go to school. They not only miss the educative and refining influences but miss knowledge which would make them helpful companions and efficient mothers.
- (g) Raising the age would break the vicious circle and would help girls to find their feet. At present they are absolutely dependent, a drag and a burden. Ignorant, weak, helpless, unhealthy and timid they are unfit companions and partners of life and breed slave mentality in the race.

3. Crimes of seduction and rape are more often unreported, *e.g.*, for the whole of the Allahabad District cases reported were:—

Year	1923.	1924.	1925.	1926.	1927.
Cases	7	3	9	4	5

For obvious reasons the vast majority deliberately hide cases from law authorities. The publicity, exposure, loss of caste and dignity are enough to deter any one and Indian Society suffers in secret on account of false pride and the evil is perpetuated.

The amendment of the law in 1925 has had no influence because the advance was insignificant and did not meet the evil. If the Age of Consent

is raised to 18, girls and young women would themselves protect their honour and womanly dignity and boldly report their grievances.

If it was possible to set up some other agency than the police, *e.g.*, Lady Doctors, Matrons, women jurors and women Magistrates who could listen to complaints *in camera* and try these cases *in camera*, the law would become more effective because more cases would be reported and punished with salutary effect.

4. The amendment of 1925 has in a measure protected girls by putting off marriage beyond 13 years of age. Public opinion amongst the educated classes has been stimulated, but when girls are still married at 10, 11 or 12 I do not think it has postponed consummation of marriage. To expect married people meeting in private and postponing the sexual act from day to day and year to year is expecting too much from the virile nature of man. Reform is only possible when the Age of Consent is increased to 18 and marriages are banned before this age. All other methods are bound to be ineffective and would only harass people.

The only other way is to make "Gaona" ceremony compulsory in all cases for a number of years till the girl attains maturity in all cases, where for some special reason marriage is celebrated earlier than the Age of Consent.

5. Bengalee girls begin to show the first signs of puberty at about 12 years of age whilst up-country girls at about 14. This advent differs in different castes, different communities and classes of society. There is a hereditary influence, the influence of surroundings, climate and diet, as also the influence of calcium and parathyroid deficiency. Puberty is generally ushered in by stages. The girl perhaps just menstruates once to begin with, then there is no menstruation for several months and irregular menstruation for a year or so. Successful ovulation is generally delayed up to 15 or 16 years. As in the vast majority the first child is born at 16 years of age. The first menstruation should scarcely be called puberty. In any case it does not mean maturity of the physical body nor maturity of the ova although they might be capable of fertilization.

6. In the case of married people cohabitation is common at whatever age the husband and wife come together unless prohibited by the restrictions of Gaona when the husband has no access to the wife. But none of these cases ever come to court.

7. The consummation of marriage before or at puberty is never due to religious obligation or injunction but is always the result of the sexual passion of man. The sanction of the Shastras is only a cloak for the infamy of man in this brutal action. The Shastras I have heard direct that procreation should be delayed till 16 years or till after 36 menstrual periods have been completed. Custom prescribes the coming together of husband and wife about the 3rd or 4th day after marriage. Some of these customs are ancient, others have been adopted since Mohammadan invasions. Shastras have been interpolated with new code to suit the requirements of the day. In the periods of Ramayan and Mahabharat the marriageable age was always 17 or 18. No Shastras could have contained 8, 10, 11 and 12 as the prescribed age for marriage as is sought to be made out from the body of the Shastras in our day. The penalty prescribed is "Narak" for the ancestors of those who do not marry girls of these tender years long before they have menstruated.

8. In Bengal "Gaona" ceremony is not in evidence at all. In the better classes the bride stays at her father's house for one year. Evidently the recent old customs prescribed it, because there is a special ceremony gone through in the temple of the nearest goddess whereby the despatch of the bride with her husband takes place soon after.

The ceremony of Garbhadan is a different thing altogether. It takes place some little time after the first menstruation and is meant to purify the system of the woman and strengthen it for procreation.

In the upper provinces "Gaona" is a mere living custom and the girl detained in the father's house for 1, 2, 3 or even 5 years till the astrologers

and family priests find a suitable date. There is no question of puberty in Gaona. It is just a fixed period of time. In some cases it coincides with puberty, in others with maturity and consummation of marriage follows it.

9. "Attainment of puberty is" never "a sufficient indication of physical maturity to justify consummation of marriage". At 12-14 the girl is quite immature. The internal secretion of the ovaries becomes just established and acts as a tonic for the general development of the body. The muscles get firm, there is an improvement in the general circulation, the mammary glands improve. The chest develops, the pelvis becomes wider. The whole aspect of the child changes to that of a woman. But it takes 4 to 6 years for the child to change to a graceful woman, a fit companion for a man and a capable person to bear the strain of maternity. During the whole of this period the whole of the energy is directed to tissue building growth and bone formation. Should a pregnancy occur during this period and the energies be diverted to maternity, and nourishment and growth of the embryo, the mother's own growth and development are arrested. She just shrivels up, her bones become thin, soft and pliable even if osteomyelitis does not actually develop.

Her nutrition becomes affected and her calcium metabolism is seriously disturbed. Some develop Kyphotic changes and pains in the back, deformities of the pelvis are directly to be traced to this condition.

The child born during this period is always undersized and underweight. He is generally rickety. It is a peculiar form of rickets which gives rise to thin limbs and a pot belly, a peculiar shaped chest, thin above, broader about the Diaphragm. The child is weak, often has bad digestion and if he lives grows to be a puny specimen of humanity. I therefore think that it is at 18 years of age or above 18 that consummation of marriage should take place and the risk of pregnancy undertaken. The mother has a much better chance of escaping the horrors of parturition and the child born shall have much better chance of life, health and development.

10. No girl is competent to give an intelligent consent to cohabitation with due regard and realization of consequences till she is 18 years old. It is no good raising the Age of Consent by just a year or so. The laws should be based on an intelligent appreciation of the facts of development of the human body. Consent should come only when physical maturity has been attained. It is most important in India to be thorough about this age because neglect in the past has deteriorated the national physique. To regain and improve the health of the nation "consent" must be fixed at the age of 18 when the girl has attained a sufficient amount of maturity.

11. During my professional experience I have met with hundreds of cases in which cohabitation before puberty, during what is called puberty and before full physical development of a girl has resulted in injury to her health, her body and has prejudicially affected her progeny.

(a) The pain, bleeding and injury to the soft parts has produced such a horror and strain on the mental faculties that she has lost her mental balance for 2 years and ever afterwards remained a nervous person (age 12 to 15).

(b) It has produced rupture of the Vagina to require treatment for six weeks (11-13). In one case Tetanus resulted and the patient died.

(c) It has produced Pelvic cellulitis (age 13-15).

(d) I have been able to trace the precocious stimulation of sexual nerves result in loss of nerve control, Hysteria, Tetany, Hystero-Epilepsy, Giddiness, Nervousness and fits of unconsciousness all resulting from the same cause (age 12 to 16).

The apathy of the female and girl-child has somehow been mistaken and there is a very widely held belief that the female is 8 times as sensual as the man and requires a prolonged sexual act to satisfy her sexual cravings. The fact is that she has her periods of ovulation once or twice a month 8 to 12

days after menstruation and 2 or 3 days before menstruation during which she may be said to feel a kind of sexual stimulation. During the rest of the month she is absolutely apathetic and the sexual act is distasteful and unpleasant to her. Female animals kick and attack with their horns any male intruding on them at any other period. The human female quietly submits to the brutality of man and the man finding that the female does not respond redoubles his efforts exhausting himself as well as the girl. Great deal of misery and exhaustion results from this and affects her nerves and gives rise to para- and perimetritis, cervicitis, displacement of womb and nervous breakdown.

Pregnancy following affects the mother's health more, she just withers, her development becomes arrested and latent diseases such as Tuberculosis and malignant diseases become active and kill off the patient. Those that live through, always are broken down in health and nerves.

Parturition in more than 50 per cent. of these cases brings rupture of the perineum, rupture of the os uteri, Leucorrhœa and in some cases I have actually seen partial rupture of the body of the uterus (age 14—16).

I have met a particular form of trouble—Menorrhagia which is difficult to treat because it results from Fibrosis of the uterine musculature—result of inflammation of the uterus either from congestion of the body during prolonged sexual acts or resulting from early pregnancy and faulty subinvolution.

The progeny of these immature girls are almost always immature. Even when they look flabby they are undersized and underweight and nearly always suffer from flatulence and digestive troubles and rickets. They are weaklings and grow as such. They are backward and mentally deficient and defective in other ways. They are never vigorous and virile.

One more grave sequence I cannot omit mentioning. The coolness and apathy of a husband towards his wife when he finds that a wife with a ruptured perineum, a leucorrhœal discharge and a broken down constitution has ceased to be a smiling and cheerful face about him and this is the beginning of an unhappy home.

12. I consider early consummation and early maternity responsible in a great measure for high maternal and infantile mortality. These vitally affect the well-being of the race and retard the intellectual and physical progress of the people. The precocious stimulation of the immature sexual nerves leads to their irregular action. Early marriage with its attendant and inevitable forcing of a sexual life on the immature girls often brings about hysteria and a nervous breakdown. The mentality of the race suffers from this breakdown and the result is a highly nervous and emotional race of Indian people with no fortitude, no backbone, nor a capacity for sustained effort—early marriage is one cause and a substantial cause for defective children. The defects are mental, moral and physical. It is curious that the physical and moral defects follow mental defects.

We come across the dull and backward child who is lethargic and stupid, the nervous child with his fear of spiders and animals and ghosts giving rise to night terrors and convulsions. The feeble-minded child devoid of will-power showing marked moral stigma such as lying, stealing, swearing, timidity, distrustfulness, cruelty and mischievousness. From this the next step is feeble-mindedness, imbecility and idiocy. The epileptic child, the criminal, the insane and the cripple follow in the wake of the mentally defective. Children suffering from defects of vision such as blindness, nystagnus, squint, errors of refraction from defects of hearing and speech, the deaf and the deaf-dumb, the lisping and the stuttering child, even children suffering from such defects as harelip, cleft palate, spinal defects and adenoids are all in one way or another associated with the mentally defective.

Early marriage precludes the chance of avoiding to marry highly nervous girls who are sure to produce a great number of these defective children. The general stamina of children born of early consummation is weak. They

are small in size and deficient in weight. Their bones are thin, their digestion is weak. If they live they are altogether a weaker race physically and mentally, so that one can confidently say that this early consummation and early maternity is responsible for the deterioration of the race and retards the intellectual and physical progress of the people.

13. There has been a great development of public opinion amongst educated and better classes with regard to extension of Age of Consent. The masses in India soon follow the practice of their betters.

14. Women-mothers never favour early consummation of marriage for their children. It is an evil with which they put up and submit, but never favour. If only they had means they would delay the marriage of their daughters to a suitable age.

15. It is impossible to definitely distinguish the age of girls as to whether it is 12, 13 or 14. They differ so much. The amount of their general development depends on so many circumstances that it is no guide. The only certain way is to keep a birth certificate.

16. The margin of error will not be reduced if the Age of Consent is increased to 14. But if it is made 18 it would certainly be reduced. A medical man can then more definitely certify as to her age.

17. Extra-marital and marital offences are two quite different things. I would use the word "Rape" for only extra-marital offences. Marital offence or criminal sexual intercourse is only a misdemeanour and should be classed as a severe injury and called a criminal sexual intercourse and not rape and punished accordingly. The punishment for a first extra-marital offence should be severe flogging 3 times over at intervals of 3 weeks and for a second offence 7 years' penal servitude. For marital cases rigorous imprisonment for 6 months.

18. The statement of the girl in both these cases should be taken *in camera*, in presence of a lady doctor and if possible before a Woman Magistrate. The atmosphere and exposure of an open court and the bad taste of the examining counsels in putting indelicate questions is in some measure responsible for women not coming forward to bring a charge.

For both classes the process should not be harassing and justice should be swift and not prolonged. A first class Magistrate the most senior in the station or preferably the District Magistrate should conduct these cases and punish forthwith—of course there must be right of appeal to the Judge.

19. The whole procedure in these cases must be rapid. The Magistrate must take up these cases first so as to allow little time for collusion. For improper prosecution and extortion the Magistrate must frame a charge forthwith and deal accordingly. Improper and wrong prosecution must be punished severely.

20. "Penal Legislation fixing a higher Age of Consent" and "fixing a higher minimum age of marriage" are both necessary. The first is necessary in any case to meet the extra-marital cases. Penal legislation besides has a definite influence on society and social rules of marriage. The intelligent people and reformers shall have an easier task to persuade people from unhealthy practices the necessity for which has ceased to exist. They shall have a reason to break through the customary practices of the country and their class and the mass always follow the practices of the intelligentsia. Ignorant orthodox opinion is always against all legislative interference with their social customs quite oblivious of the vicious circle which child marriage and early consummation of marriage brings in its train. All intelligent people desire penal laws to act as a deterrent.

21. Law is divine to the people of India and from the time of Manu law has been uniformly respected. Indian society (especially under foreign rule) is too disorganised for education and social propaganda to be effective. I therefore prefer to rely on the strengthening of the penal law to secure the object in view.

Oral Evidence of Rai Bahadur Dr. S. K. MUKHERJI, L.M.S., Member of the Executive Committee of the Allahabad Maternity and Child Welfare League, 9, Lukerganj, Allahabad.

(Allahabad, 16th January 1929.)

Chairman: You retired after 20 years of service as an Assistant Surgeon?

A. Yes.

Q. Were you also the Secretary of the Dufferin Fund?

A. Yes, for about 12 years.

Q. Were you also the Secretary of the Child Welfare and Maternity League?

A. I was the Secretary of this League for about four years.

Q. Are you a member of the Executive Committee of the Allahabad Maternity and Child Welfare League?

A. Yes. I have also written a book on "Care of Indian Children".

Q. Have you had experience of other districts too where you have worked?

A. Yes.

Q. Do you think that the existence of the child marriage, i.e., marriages below 12 years and consummation of marriages below 13; is common in this part of the country or wherever you have been or in any particular district?

A. I don't think that it is common in the United Provinces except amongst the Bengalis.

Q. Do you mean to say that early marriage is not common here?

A. Early marriage is common but consummation of marriage is not so common before 12 or 13, except in a section of the people. Some individual cases have come to my knowledge. If I were to make any deduction from that, I would say that amongst the Brahmins, Chamars and Bengalis, these cases are common.

Q. Do you know of any community in which late marriages have been taking place as a rule?

A. Generally it is taking place amongst the Muhammadans.

Q. Does it take place amongst the lower classes of Muhammadans also as a rule?

A. Their marriages are not so early as amongst the Hindus.

Q. Have you noticed girl-mothers before 14 complete?

A. Yes.

Q. Have you seen many such girl-mothers?

A. A fair number.

A. Although consummation does not take place below 13, still have you seen girl-mothers under 14 and 15?

A. Yes. I have generally seen such cases amongst the Bengalis.

Q. Do you think that the law of the Age of Consent has been known in parts where you were?

A. It is generally not known.

Q. Have you any reason to believe that it is broken in many cases?

A. I think that in many cases it is broken. If a man marries a girl of 12 or 11, he never knows that there is such a law and he consummates the marriage.

Q. Do you mean to say that whether there is puberty or not or soon after puberty, he consummates the marriage?

A. He is not concerned with puberty at all. Whenever he sees that he has charge of his wife and whenever he is alone he consummates.

Q. Is that even amongst the Bengalis also?

A. Yes. I think that where a man is prevented on account of Gaona that is another thing but when it is not a case of Gaona, whenever the girl goes to her husband's house the marriage may be consummated irrespective of puberty or age.

Q. Do you know of any such cases?

A. I know of many cases.

Q. Do you want both the Age of Consent Law and the Marriage Law?

A. Yes.

Q. What is the age that you recommend for Age of Consent?

A. 18.

Q. Now within marriage, do you think that the law of Age of Consent without a law of marriage fixing a minimum age, would be effective?

A. I don't think that it will be effective. Unless the two go together. I don't think that it will be effective for this reason that many people are ignorant of this law. Similarly you will find this law will not be effective because it is not known in the first instance and secondly these cases are never reported and detected.

Q. Don't you think that the Age of Consent Law standing by itself will be effective?

A. No.

Q. What age would you recommend for marriage?

A. 16.

Q. What age for marriage would you recommend for boys?

A. At least it should be 20.

Q. What age would you recommend for consummation?

A. Consummation after 16 wouldn't be so bad. I think 16 would meet with the situation for the present. Scientifically speaking any age below 18 is wrong, but for the present 16 will do.

Mr. Kanhaiya Lal: Why is any age below 18 wrong?

A. The development of the bone does not take place properly up to 21. Now in the case of females, for instance, the principal bones that go to form the pelvis are not united till 20 and the ossification of the bones is not complete till a man is 25.

Chairman: Do you think that there is any method by which marriages may be allowed at any age by the parents and yet consummation could be postponed till after the girl is 16?

A. It has been tried in India by the system of Gaona but the Gaona has become obsolete as well as ineffective for this reason that nobody cares for it. It has not now the same sanctity that used to be attached to it. Formerly if a girl was married when say for four or five years the man was not allowed to see his wife. In fact he used to be in his house. That custom has practically gone now. I know even now that there are some houses where the son-in-law even if he goes to the girl's house, is not allowed to see the girl till the Gaona is made. Now Gaona is vanishing. I think that it is a great disadvantage in getting a woman married and still not allowing her to go to her husband's house. During that interval she might become a widow with the misfortune of not having been allowed to go to her husband's house besides.

Mrs. Beadon: We were told in Calcutta that a research is going on about this Calcium metabolism. Can you give us any further information about this? Have you any experience about this?

A. I am sorry I cannot give you any statistics but from my personal experience I can tell you that osteomalacia develops and also Menorrhagia starts which is due to the deficiency of calcium.

Q. But you have said that Menorrhagia is due to Fibrosis of the uterine.

A. That is one cause, and if you give these girls calcium, Menorrhagia will be cured.

Q. In your answer to question No. 11 in sub-para. (a) you have said that the pain, bleeding and injury to the soft parts had produced such a horror and strain on the mental faculties that she lost her mental balance for 2 years and ever afterwards remained a nervous person (12—15). Does the figure you have mentioned there mean that you have seen 12 or 15 cases?

A. No. It is between the ages of 12 and 15 such things happen.

Q. How many such cases have you seen losing mental balance?

A. I can at least recollect five cases.

Q. What were the girls? Were they Hindus or Muhammadan girls?

A. Hindus.

Q. Were they all about the ages of 12 to 13?

A. Yes.

Q. Did these cases happen recently?

A. These cases happened about 10 years ago.

Q. Were these amongst the Bengalis or amongst any other class?

A. One case was a Bengali, 3 cases were Hindus and one case was a Muhammadan. There was mental trouble after the consummation of marriage and the girl was so much frightened that she couldn't bear the sight of her husband.

A. In answer 11 (b) you have stated that it has produced rupture of the vagina to require treatment for six weeks. Do you mean to say that this is due to the result of early consummation quite apart from child-birth?

A. Yes.

Q. When did this happen?

A. Some ten years ago this happened.

Q. Was the girl very young?

A. Yes.

Q. Are you of opinion that the children of these young mothers are poorly developed?

A. Yes.

Q. We were told yesterday by a witness that the children of these mothers are well developed but that the real strain came not on account of the birth of the child but owing to the lack of maternal care. Do you agree with this view?

A. My own opinion is that all children born of these young mothers, first, second and third, i.e., up to their 20th year, are poorly developed. In fact in all other countries there is a common saying that the youngest child is the most intelligent. In Bengal as well as here you will find that the first child is more or less idiotic. In Oudh you will find that most of the Talukdars have no children.

Q. Do you think that it is due to venereal diseases?

A. It is on account of their diet. You will find people saying that the richer the diet is, the stronger they will become but the result is just the other way. The Ranis as well as the Rajas both lose their vitality and if at all they produce anything it will be a girl. You will find most of the Talukdars in Oudh having no children. I think that it is the diet that makes them lose virility.

Q. Do they get very fat?

A. Yes.

Q. Again in your answer to question No. 11 (d) you have given us a terrible list of names of diseases. Do you think that this is all due to early marriage?

A. Yes, because the mothers' nervous system has a great influence on the children and the mothers live in perpetual drain, besides they are hysterical. I find that this mental aversion is really due to the sexual intercourse before the due time. I have discussed this question with a medical expert and he is of the same opinion. The precocious stimulation of sexual nerves results in hysteria and other things and of course all these complaints have an influence on the child. As a matter of fact if you will ask any medical man, you will find that hysteria is getting commoner and commoner in our times.

Q. So you think that the only way to remedy these evils is to fix the age of marriage.

A. Yes. That is the most important thing and that must be done if there is any consideration for the development of the race at all.

Mrs. Nehru: What are your reasons to think that these Talukdars get more girls than boys?

A. I have been working on this matter and very soon I will be able to publish the information. I think the diet has the greatest influence on the sex of the child as well as the sterility of the woman. During the first four months, for instance, if a woman were to live on simple fat-free diet, you will find that the result would be a boy. I was one day going to a rich man's house. There I saw that he had seven girls and one son and he asked me to go and see his coachman where I saw that there were 7 boys and one girl and this opened my eyes and I found that my matrons and others had more boys and very few girls.

I have experimented this method upon my patients by giving them this kind of light diet fat free for the first four months and so on and the result is a boy.

Q. Do you think the age of 16 which you want to fix for marriage will be practicable?

A. Most certainly.

Q. Do you not think that the suddenness of the change will be too great and may induce people to break it.

A. My own impression is that when they find that there is a law, they will begin to obey it. They have now become tired in a way and both the middle class and the lower class find that they have to support 6 to 10 children for whom such a law will be a great relief so that motherhood can be started late and the number of births reduced.

Q. Do you think that there will be a great difference in the births because mostly motherhood begins after 14 or 15 or even 16 in spite of early consummation?

A. Yes. In those cases it will begin from 18 and 19.

Q. Will that make any difference in the total number of children because although it may start later it may continue later?

A. You will see that at the age of 17 or 18 she begins to think of his sexual act with more responsibility.

Q. Do you think that it is absolutely impossible to penalize Gaona in any way to make the Age of Consent Law effective?

A. I think so and do not approve of it.

Q. If it is not possible to have a marriage legislation will you entirely reject the Age of Consent Law or will you have it as the second best?

A. As I said before, I would like to have both, but if it were not possible to have a marriage law, then I would have the other one, viz., the Age of Consent Law which may have at least some effect. I will not reject the consent law altogether.

Q. In that case, can you suggest any means as to how to make it operative? You have suggested some means here to make it operative by suggesting some other agency of enquiry than the police and so on. Will you please clear this up and give us your whole scheme?

A. For instance, in olden days when medical science had not improved so much and people had not advanced there was in England a Board of Matrons, which used to give evidence in Court, and examine women and serve as an authority on cases of pregnancy. Well, I do not see why we cannot set up something like this in every village.

Q. What is your suggestion for India?

A. Every village should have a Board of Matrons, that is to say, of elderly women to whom the complaint of any girl may be taken.

Q. Do you think that it is possible to find such matrons here?

A. Yes.

Q. Do you want to give these Boards the right of complaint and prosecution only or do you want to make them the trying tribunals?

A. They will judge whether a certain case requires to be tried and then, of course, they will take the necessary action. If we could set up women honorary magistrates they could take the complaints to them or they themselves can judge these cases and bring them to the notice of the authorities. The difficulty is this. I find that there are no complaints because a girl is too shy. Then the second thing is the girl is harassed by the Police who take her from one place to another and that is why there are no complaints.

Q. Do you want the Board to consist of one or more Magistrates?

A. I mean by a Board, a Bench of Magistrates.

Q. Will you have them as honorary or stipendiary magistrates?

A. I will have them as honorary magistrates and if it is not possible to have them as such, I will have stipendiary magistrates.

Q. In places where such ladies cannot be found competent to do this sort of work, what will you do?

A. I think the next persons should be these *Dais* and lady doctors.

Q. Do you want these *Dais* to act as Judges?

A. They should report in the first instance and the judges will be lady doctors of all grades.

Q. Are there lady doctors in all villages?

A. Then I really don't know what to do.

Q. Can you say that it is possible to have a Board of Women in all places?

A. Yes. I think there are elderly ladies in every place.

Q. My question is this. In places where you don't find women competent enough to take up the work of Magistrates what alternative will you have?

A. There should be a Bench of Magistrates one or more who should go round and see the cases just as in England there are touring female magistrates.

Q. If they are not available, what will you suggest?

A. Then men magistrates will have to go and they will have to do the work *in camera*.

Q. You object to marital cases being termed rape. Is this objection only in name or do you want any change in punishment?

A. In marital cases the punishment should be fine and that fine should be given over to the girl as *istri dhan*.

Q. The fine will be paid but the girl will go back to the husband and the offence will be repeated. In fact the husband will take back the money and there will be no punishment at all.

A. As the girls get more sense probably it will work better; that is my hope.

Q. What do you provide for stopping the repetition of the offence?

A. When a man is fined or in some way punished, he does not repeat it and if he does repeat it then the punishment should be severer.

Q. Don't you think that if husband and wife are separated by taking a legal bond from them it will be a better provision than keeping them in the same house and fining the husband.

A. The girl may remain with her parents for a period till she attains the age.

Chairman: But the parents will say that they do not want to support her.

A. The husband's people will get an order that they should maintain her.

Mrs. Nehru: Your objection that severe punishment will affect the girl will be removed that way?

A. I think it is a better way.

Q. You have mentioned that among Bengalis the age of puberty is 12 while amongst others the age of puberty is 14. What is the reason for this difference in the age of puberty among Bengalis and others?

A. There are many factors—Food, climate, exercise and heredity. In people who have been accustomed to have sexual intercourse and get children early the development is quicker.

Q. Are you of opinion that early marrying people get puberty earlier than late marrying people?

A. Yes.

Q. Can the age of puberty be delayed by practice?

A. Yes, by generations of practice.

Q. Other people living in Bengal do not get puberty earlier like Bengalis?

A. No.

Q. So it cannot be due to climate?

A. No.

Mr. Mitra: The opinion of the scientific people is that the age of puberty is the same throughout the world but there are exceptional cases found everywhere in Europe and in India?

A. There are some differences in tropical countries. Amongst Europeans living in India you will find that those who have been here for two generations, their girls attain puberty earlier than the English girls. It may not be climatic effect but it may be due to social environments. You can stimulate puberty. There is a climatic effect also. In exceptional cases girls start menstruation at 11. In Bengal, for instance, you will find that at 10 or 11 or even at 9 some girls show signs of menstruation. It is due to heredity as well as climate.

Q. Can you tell us from your experience whether Bengali girls when they come out of the province or are domiciled in other provinces get puberty late or do they keep their original tendency?

A. Hereditary influence militates against late puberty.

Q. You suggest 16 to be the minimum age for marriage?

A. Yes.

Q. You say in para. 7 that there is no religious notion about consummation of marriage. You certainly know that there are some texts of the Shastras that enjoin consummation within 16 days of the first menstruation and that is believed by some people?

A. My reading of the Shastras is that some Shlokas have been interpolated into the Shastras. See about Rama and Sita's marriage—she was married when she was a grown-up girl. If you see the pre-historic things that have descended to us you will never find a child-girl marrying. Then where does this difference come in? You will find that after the Muhammadan invasion when they found that these people were very anxious to take away unmarried girls and left behind those who were married, they naturally sought to put in this Shloka.

Q. In the earlier Shastras we find Shlokas supporting ante-puberty marriages.

A. I am not versed in Shastras but I think those people are not correct. I have heard it from some of the Pandits that before 36 periods after first menstruation there should be no consummation of marriage. My reading of the Shastras is very poor but I have it from three or four Pandits.

Q. Unfortunately these poor people do not rely on the Shastric thing but on the custom that they must give girls in marriage before puberty?

A. This custom is a sort of vicious circle and we must break the circle.

Q. Are they agreeable to have consummation postponed till the 16th year?

A. We find that in practice it has been postponed, but not all over the country. I am in favour of having a marriage law.

Q. You are not for providing any exemptions if there is a marriage law?

A. I think 16 should be the marriage law. When you make that you say that children born of girls before 16 will not inherit property. That will be a good fear.

Q. Any other suggestion about punishment in cases of breach—fine or imprisonment or some such punishment?

A. I think that marriages before 16 should be made invalid.

Q. But the difficulty will be that once you declare the marriage invalid the children born will be illegitimate and at the same time if once the law declares a marriage void the girl will have no chance, constituted as the society is at present, of marriage. This punishment would be very severe.

A. Therefore it will stop early marriage. Once they find that marriage is not valid nobody will dare marry.

Q. You know that early marriage is practised among the Brahmans and Vaishyas in Madras, in Bihar and Bengal. If you make such a law it will have no support?

A. Unfortunately I find half measures are of no use. Time has come for India to choose between full measures or no measures. The only effective thing I can think of is that no child should be born of mothers below 16.

Mr. Shah Nawaz: Can you give us any authority in support of the proposition enunciated by you that verses in the Shastras or Smritis were interpolated in regard to marriage and consummation?

A. When I was at Lahore our Arya Samajist friends told me about it. They will tell you that there are many verses that have been interpolated and they would give you proof. Swami Dayanand was one of those persons who found out all these things and gave literary as well as historical proofs. That is all I can say.

Q. Don't you think that a considerable number of girls may go wrong if they were not permitted to marry before 16 in the lower classes?

A. No. It is absolutely a misconception on our part to think that the girls have the urge of sex so much as men have. They are passive agents; you have got to excite them to bring about sexual response and it is at that early age that a girl is particularly more shy. She is more virile and virility has been proved to come on after the menstruation period ceases. Then she gets manly things about her. I consider it a very great wrong that we have got this idea.

Q. Don't you think that a considerable number of boys will resort to evil habits if they are not married before 20? How are we going to prevent them?

A. I have found these cases and I have known these cases amongst my patients but ill-health results after the boy is married. Sexual weakness comes only when he gets a scope. Here and there if a boy goes wrong once he learns a lesson, he is all right after that, and there is not so much sexual waste as there is in early marriage.

Q. But they do resort to evil habits?

A. They do sometimes but that does not make them so weak as this early sexual intercourse.

Mr. Bhargava: In para. 8 you say that the ceremony of Garbhadan is a different thing altogether. It takes place some little time after the first menstruation and is meant to purify the system of the woman and strengthen it for procreation. What do you mean?

A. That is the idea among the people.

Q. Does early consummation lead to sterility?

A. Later on it leads to exhaustion. For instance, in Bengali we have a proverb that a woman of 20 is old. Those people who indulge in sexuality early become sterile at 40.

Q. Girls whose marriages are consummated very early—do they become more stimulated and sensitive than they would have been if they had been married late?

A. Yes.

Mr. Yakub: Several doctors and lady doctors have told us that children born of mothers of younger age of 13 or 14 have the same weight and as good health as children born of older mothers. Do you agree with that?

A. My experience is absolutely otherwise.

Q. You say that artificial puberty can be attained by a girl. Do you think a girl who attains artificial puberty is fit for early cohabitation or maternity?

A. Yes.

Q. Without causing any harm or injury to her body?

A. It will cause injury to her body.

Q. Is early puberty at times brought about artificially?

A. Artificial stimulation takes place at times but is rare.

Chairman: I think Bengal is the hot-bed for it?

A. There marriages take place early.

Mr. Mitra: You will agree with me that in Bengal it is never practised?

A. It is practised amongst the hill people by the girls who practise prostitution and amongst some Muhammadans in the United Provinces.

Mr. Yakub: You say that girls should not be married up to 16 and you also say that the general tendency is that purdah should be removed and girls should be allowed to move freely amongst men. Don't you think that this free intercourse with males will create a sort of artificial passion amongst girls and there will be danger to their remaining less straight if they are not married early?

A. I do not think so. As I have already said I have a better idea of female nature.

Q. But you yourself say their passions can be aroused?

A. That does not mean by moving promiscuously with men.

Q. Does dancing stimulate passion?

A. No. Dancing is such good exercise, it makes you perspire. The other surrounding effects may be bad but dancing in itself is a very good exercise. If after dancing you take a glass of whisky and go in a room and talk to a girl there may be stimulation.

Mr. Kankhaya Lal: There is considerable opposition to fixing any age of marriage above 12. In view of that opposition would you recommend that as a first step we may begin with 14 as the minimum age for marriage?

A. Whatever the exigencies require you know better but my statement is that it should be 16. If you want to improve the race, if you want to improve as a nation, 16 should be the minimum. 18 is better but 16 should be the minimum for India at present.

Q. In case the legislature adopts 14 as the minimum age of marriage would you recommend same age for consummation or would you recommend 16 for consummation?

A. When I recommend 16 for marriage I recommend 16 for consummation also. After 16 the trouble is not so much as before 16. My experience of mothers, who get their first child early is that they are torn up and this is a thing which they suffer and suffer quietly all their lives. I know many cases where this has been the cause of a great deal of suffering and want of conjugal happiness.

Q. If the legislature fixes 14 as the minimum would you fix 16 for consummation or 14?

A. I do not know the law part of it but if it is possible to fix a law of consummation at 16 I would do that.

Q. Even if marriage law is 14 consummation should not take place before 16?

A. As I have said the law will be ineffective.

Q. Would you therefore have the two ages the same?

A. No, I am recommending as a medical man and I would recommend 16 for both.

Q. In case the legislature fixes the marriage age at 14 and the consummation age at 16, would the medical profession help us in bringing cases of breaches of the law to light by giving information confidentially to the proper authorities?

A. It will be against our etiquette, it will be against our instinct and it will be against our duty to patients.

Q. In cases of suspected poisoning you have got to do it?

A. The thing is that generally we do not do it unless we are forced. I may tell you an instance of a boy poisoning himself with something who was brought to Colvin's Hospital. He was nearly dying but we somehow pulled him together. The question came up whether we should not make him over to the police. I had unfortunately the District Magistrate, the Commissioner and the Superintendent of Police there on the spot and that is how the thing started. I was advised by the Civil Surgeon in the face of those people that if the police ask you about it you have got to say so but it is not your business to go and volunteer.

Q. Parents have greater obligation but no one will report?

A. Very few cases come to light. I found in Allahabad only 3 or 4 cases having been reported during these years. For a number of years I find from the police that only 4 or 5 cases have been reported though many more occur. It is impossible to expect anyone to report.

Q. In view of this difficulty would you recommend that these marital cases should be made cognisable by the police, that is to say, if they receive information they should at once enquire and make a report?

A. I strongly object to that. "Police should have no hand in it.

Q. Whether the girl is under 12 or over 12?

A. Yes.

Q. Then you are narrowing the chances of detection?

A. Chances of detection are very few, especially in the present state of the country. Most ladies are in purdah and you have no chances of knowing. Medical people would not help you. It will also be difficult to find out whether a girl is 12 or 14.

Q. For law cases you have horoscopes?

A. They are quite wrong, often manufactured. If there is no proper birth registration, you will have to investigate these cases.

Q. Would you recommend the grant of a free birth certificate when a birth is reported?

A. I think it should be done. As it is the man goes to the police office, reports the birth and gets some chit. If the law requires that it should be kept and utilised in future people would utilise it.

Q. Would you further recommend a system of registration of marriages giving the names, birth place and ages of the marrying parties?

A. Yes, I would recommend that.

Q. Would you also recommend that in case of these reports a free marriage certificate should similarly be granted to the marrying parties?

A. Yes.

Q. What age would you recommend in extra-marital cases?

A. 18.

Q. It has been represented to us that it will be very difficult to check brothel girls and daughters of prostitutes. Can you keep them untouched up to the age of 18?

A. If there is a law it will be practicable.

Q. Would not young boys fall victims to temptation and suffer for the fault of girls?

A. There it is still easier because all brothels could be licensed and the ages of girls practising this profession could be registered.

Mr. Beadon: If you license the prostitutes don't you think you are encouraging the profession?

A. In India you want some kind of distinction between prostitutes and non-prostitutes. Otherwise difficulties might arise. A prostitute says that she is 18 but she is 14 and she will say to the young man unless you give me so much I will report it to the police.

Q. But there is no need for young men to go there?

A. That is for those people who go there; they would be in a false position unless the age of the girl was given.

Mr. Kanhaiya Lal: Don't you delay their means of livelihood by raising their ages to 18?

A. But you do not want to perpetuate that kind of livelihood. I think the sooner it goes the better.

Q. You would also be increasing their chances of marriage?

A. Yes.

Mr. Yakub: But the question of employment is very serious. If they were married how are their parents to be maintained?

A. These people must be punished as severely as possible.

Q. But how will you feed them?

A. Their hunger will make them go and work.

Mr. Kanhaiya Lal: How would you prevent hardship to young men falling a prey to temptations of these young girls consenting but really not capable of consenting?

A. The fear of law will deter many people from committing such offences at an early age. It will take a little time but it will be effective.

Q. Do you think that weakness or early loss of virility is more due to frequency of child-birth than to early marriage. In fact some people have suggested contraceptives?

A. In the Indian class of society contraceptives are not possible. Among the lower classes contraceptive is impossible as a preventive pessary costing about a rupee is beyond their means. They cannot think of it.

Written Statement of Pandit RAMA KANT MALAVIYA, Allahabad.

1. Certainly in educated circle.

2. (1) None.

(2) The high rate of mortality among young girls and the large number of cases that come to court in which outside the marital state girls, in straitened circumstances, though of sixteen years in age or slightly above but inexperienced in life and not mature enough to realise all the consequences of their action, are alleged and very often proved to have given their consent to sexual intercourse.

3. Yes, it is frequent. So far as my knowledge goes the amendment has failed to achieve its subject. I would raise the age of consent to 16 in marital state and 18 outside marital state and would make it compulsory for all Municipal and District Boards to form sub-committees for different centres within their jurisdiction to which they must co-opt a certain number of influential persons of that locality. Such sub-committees should be provided with necessary funds, and should be authorised to carry on propaganda to popularise the proposed changes and to see that they are adhered to.

4. Not to my knowledge. Same measures as suggested above.

5. About 12 or 13.

6. No knowledge.

7. I would attribute it, if it exists anywhere, to ignorance of religion.

8. Yes, Gaona is performed but the age at which it is performed depends upon the custom prevailing in each community and very often in each family.

9. Certainly not. In no case before 16, preferably later.

10. Not before 18.

11. I have heard of some cases but do not remember details of age or injury sustained.

12. Certainly.

13. I do not think that the masses even know of the amendment excepting those who have had to go to court in such cases.

14. Not to my knowledge.

15. Yes. It is a difficult question to determine. Very often expert opinion decides the question and we know how easy it is for a monied man to get the opinion that will suit him. I would see that the registration of births, if properly done, would provide for the better maintenance, supervision and control of such registers and would make entries therein conclusive evidence of the age. A duplicate of it should be kept in the magistrate's court for which entries should be periodically reported and should be entered therein.

16. No.

17. Yes. In marital cases I would (*for the first few years only*) prescribe a fine of Rs. 100 and would debar such a convict from getting any government employment *for life*. If given wide and sufficient publicity this punishment would be very effective. In extra-marital cases I would give not less than two years rigorous imprisonment unless the man is prepared to marry the girl, in case they both belong to the same religion. Otherwise I would insist that the guilty person should be bound to give maintenance to the girl for one year. This will be over and above his sentence of imprisonment. I feel I am suggesting very hard methods but the trouble is now so widespread and so ruinous that very harsh steps will have to be taken if it is really desired to kill this disease and to improve the manhood and the womanhood of the nation.

18. Yes. Within marital state the cases should be tried in camera preferably by the sub-committee suggested by me in reply to Question 3 above.

Outside marital state they should be tried only by the Joint Magistrates. The trial in both cases to be by the help of a jury of educated persons not belonging to the same religion as the accused.

19. No.

20. I would suggest that the minimum age of marriage be fixed by legislation, but without a penal legislation fixing a higher age of consent for marital cases, the object in view will not be attained. Evidently the committee does not want the opinion as to the marriageable age and hence I do not offer any opinion about that.

21. Progress of social reform by means of education and social propaganda is essential for the success of such reforms but the object in view will not be secured without the strengthening of the penal law.

Oral Evidence of Pandit RAMA KANT MALAVIYA.

(Allahabad, 16th January 1929.)

Pandit Kanhaiya Lal: You are a member of the bar?

A. Yes.

Q. How long have you been practising?

A. I joined in 1907.

Q. You are the Secretary of the local Sanatan Dharma Sabha and one of the Secretaries of the All-India Sanatan Dharma Sabha?

A. Yes.

Q. Has the Sabha considered this matter of age of consent?

A. I tried to convene meetings. At one meeting they authorised me to give replies to your questionnaire but after that on two occasions I tried to convene meetings to get their views but they did not come.

Q. Does the statement sent by you represent the views of your Sabha?

A. I have already said I am answering it in my personal capacity but I think I can carry the majority with me.

Q. In what communities is early marriage practised in these Provinces?

A. Brahmans, Vaishyas and Shudras.

Q. What is the usual age of marriage among the Brahmans?

A. It has been growing for the last few years and now it is between 11 and 13 and among the Vaishyas it is about the same.

Q. What about the lower classes?

A. They sometimes marry when the girl is still in the embryo but usually it is 5 to 7 years.

Q. When is consummation effected among the Brahmans and Vaishyas?

A. In the majority of cases not before puberty.

Q. And among the lower classes?

A. It is the same.

Q. Is gaona ceremony celebrated before consummation is started?

A. Yes.

Q. How long after marriages does it take place usually?

A. That depends on the custom of the caste and sometimes on the custom of the family. Sometimes it is within a year and sometimes it is 3 to 5 years after the marriage and at times along with the marriage but invariably it is after puberty.

Q. Have you noticed any evil results following early consummation or early maternity?

A. There are hopelessly bad results. The girls are shattered in health, children are very weak and they die early. The mothers also die.

Q. What remedy do you propose to save the country from these evil results?

A. Raising of both marriage age and age of consummation.

Q. What minimum age would you recommend for marriage?

A. So far as the question of marriage is concerned it is rather difficult because there is a large section of orthodox people who still believe in marriage before puberty. It will be very difficult to convince them that they should not follow the shastras. From what I know of the shastras I think the shastras give power to marry a girl within 3 years of her attaining puberty. There is a growing section among the orthodox people who are going to stick to that and to marry girls within 3 years of attaining puberty. Therefore I am prepared to suggest that marriage age should be fixed at 15 but if a man is able to convince a District Magistrate that for some reason or other a girl must be married before puberty as a special case permission might be granted to him.

Q. Will that not be detrimental to the interests of the girl?

A. If a man has conscientious objection the exemption may be granted. Demand is so growing and education is doing, so much for it that this thing will go on decreasing every year. Still some propaganda will have to be done. In exceptional cases exemption may be given for exceptional reasons.

Q. If you include among any exceptional cases and exceptional reasons the one reason you suggest namely conscientious objection of the orthodox communities, everybody will say so?

A. My own idea is that every day, increasing number of people among the orthodox people themselves are beginning to realise the mistake of early marriage and the number of such exceptions will be decreasing every day.

Q. Is that true of Madras?

A. I cannot speak of Madras.

Q. Will that be true of Brahmans?

A. Yes, they are beginning to realise that it is a mistake.

Q. Is that true of Bhumihar Brahmans?

A. Yes, this idea is growing among them. The number of persons applying for exemptions will go on decreasing month after month as the education spreads.

Q. You think according to shastric injunction there is no sin attaching to postponement of marriage after puberty if the postponement is not beyond 3 years after puberty?

A. The shastras say that if a girl is married within 3 years after attaining puberty, after performing a very ordinary *prayaschitta* for that, that is one *gao dan* no sin can possibly be attached to it.

Q. You think a *gao dan* is necessary even if marriage is performed within 3 years after puberty?

A. Yes it is necessary.

Q. You think that the number of marriages after puberty is increasing?

A. Yes. It is not increasing as rapidly as one would like it.

Q. You recommend 15 for marriage. Do you think 14 as it is in Sarda's Bill will be acceptable to the people?

A. Without exemption it will not be acceptable.

Q. And that exemption should cover conscientious objection?

A. The orthodox communities will raise a bitter objection to any law requiring marriage after puberty without any exceptions.

Q. If the age is fixed at 13 would there be any objection on that account?

A. So often we find girls attaining puberty before 13.

Q. You think they will object to 13 even?

A. Yes.

Q. Will there be any objection to 12?

A. There will be no objection to 12. In fact the All-India Sanatan Dharma Conference held at Allahabad between the 18th and 24th January 1927 and presided over by my father Pandit Madan Mohan Malaviya passed a resolution unanimously that girls should not be married in any case before the beginning of their 12th year.

Q. That fixes the minimum marriageable age at 11?

A. The whole question is that of puberty.

Q. What age would you recommend for consummation?

A. The least 16.

Q. What is the recommendation of the conference on this point?

A. They have also recommended that consummation before 16 should not take place. In fact there was no resolution on this point. It was put from the chair and nobody objected.

Q. There is the difficulty experienced in these cases that breaches of the law of consummation take place without being detected. Can you suggest any measures for helping detection?

A. I have suggested in my reply that municipal and district boards should be authorised to form sub-committees of their own and it should be compulsory for such sub-committees to co-opt unofficial persons of the locality and that sub-committees will perhaps be able to detect much more than at present.

Mrs. Nehru: In your statement you suggest that these sub-committees should be asked to popularise the cause also. Would you also advocate that they should take up prosecution and complaint in such cases?

A. Yes, I would.

Mr. Kanhaiya Lal: Would you advocate the formation of vigilance societies in towns and rural areas partly to do educative work and partly to do detective work in this connection?

A. The whole trouble is that we have had so many committees in India and they have done no work. Municipal boards and district boards have done something and if you add non-official persons, specially such persons as willingly offer themselves, perhaps they will work better than any committees that we have had in the past.

Q. Do you think Sanatan Dharma Sabha or the social reform organisations will be able to help us in this matter?

A. I think to a certain extent.

Q. Would caste panchayats help us?

A. Not much.

Q. Would you like to make these marital cases cognisable or non-cognisable?

A. I have suggested that so far as these marital cases are concerned they had better be tried by these sub-committees. My reason is this. I have suggested that even in marital cases the age should be raised to 16. The number of such cases will be very large and the sentence that I have proposed is that the offenders should be debarred from getting any service in any institution to which the Government grants any aid at all. I would make the offence cognisable by such committees for the first few years.

Q. You want to make the complainant a judge also?

A. Unfortunately it will have to be done.

Q. Don't you think it will create a wider and deeper discontent than a law fixing the age of marriage?

A. I do not think so. So far as consummation goes Hindu shastras nowhere lay down that marriage should be consummated at a particular age. It is only Sushrut who lays down the age at 16. There is no book which lays down any age earlier than 16. I consulted several pandits but I have not got any authority on that subject that consummation must take place before 16.

Q. You might remember it laid down that every time a girl gets menses and is not approached by her husband you prevent her from becoming a mother. That is considered a sin in an indirect way of killing a foetus. Does not that show an obligation for consummation.

A. I have consulted so many pandits and they all agree with me by saying that nowhere the age is fixed that you must have consummation at 16.

Q. Do you think that the rule enjoining a man to approach his wife during menses, is recommendatory or mandatory?

A. I would go a bit further. Every text lays down that certain rules ought not to be observed in *apat kal*. We must accept for the present time what is suitable.

Q. Are you prepared to say that even the rule about marriage before puberty is of a recommendatory character and need not be observed in *apat kal*?

A. It is too much to say, but it will have to be done.

Q. Am I to understand that you would like the present law to stand in regard to cases below 12 being cognisable and above 12 being non-cognisable?

A. Yes.

Q. Would you require that these marital cases should be enquired into only by higher officers of the police like Deputy Superintendent of Police or Inspector of Police as a safeguard against possible oppression?

A. I would strongly support it.

Q. If this safeguard is provided would you make these marital cases cognizable?

A. Not even then. In marital cases the danger is of ruining the whole family.

Q. Would you recommend as a safeguard that in these marital cases the trying magistrate should make a preliminary enquiry to satisfy himself of a *prima facie* case before he issues process or notice to eliminate false and fictitious cases.

A. I would agree with that. I would further say that trial should be in camera.

Q. Instead of cases under 12 going to the Sessions Judge and above 12 to the magistrate, would you recommend that there should be a matrimonial court consisting of a magistrate and two non-officials to try these marital cases?

A. I would strongly advocate it.

Q. Would you have these non-officials as assessors or jurors or as co-judges taking part in the assessment of the guilt as well as the sentence?

A. I would have them as co-judges.

Mr. Yakub: Would you also like to have some ladies on this tribunal?

A. If the ladies are willing I can't object.

Q. You think suitable men will be available to act as co-judges?

A. Yes. Women will also be available?

A. Not in all places. They will be available after sometime after the spread of education.

Pt. Kanhaiya Lal: As regards the rural areas would you recommend that these cases may be tried by village panchayats?

A. Not by so small a body as the village panchayat which will never convict.

Q. You know people have to come from long distances and have to incur heavy expenses?

A. It is so difficult to get a conviction from a village panchayat.

Q. In order to restore good relations between the husband and the wife, would you allow marital cases to be compounded with the sanction of the court?

A. I would not agree to that. That will be going too far.

Q. Why?

A. In that case pressure will be brought to bear upon the wife in every case to compound it.

Q. But the magistrate might refuse?

A. We know that magistrates do give permission.

Q. But suppose a girl has received no injury, in that case the magistrate might allow it to be compounded?

A. Then you have to lay certain lines for the conduct of the magistrate.

Q. We will leave it to his discretion?

A. Which may or may not be satisfactory.

Q. Then what is your recommendation?

A. I won't make it compoundable.

Q. Suppose a girl is 14 and the boy is 17 or 18 and there is no injury would you make it compoundable then?

A. If you give out a threat that every person convicted of this offence will not get any Government employment it will be so effective that such cases will seldom arise. That will be a sort of inducement to the man. If you make it compoundable the offence will be committed and the husband will say we will see it later on and get it compounded.

Mr. Yakub: What will be the effect of the punishment you suggest upon thousands of agriculturists who do not care at all for Government employment?

A. You know 2nd or 3rd year the Government has to grant Takavies. We would go further and say that the man who has committed the offence will not get the Takavi.

Q. But Takavi is not given in all provinces and not every year?

A. My own impression is takavi is now necessary almost every year. I am prepared to go as far as that, so as to make it absolutely impossible for any such man to get aid from Government in any shape or form.

Pt. Kanhaiya Lal: Would you exempt a boy of 16 or 17 from punishment?

A. Up to 18 till he is a minor and I would exempt him from punishment.

Q. A boy of 18 understands all that he is doing?

A. But what are the parents doing? Why should they not be kept in check.

Mr. Yakub: Would you make the father and the mother both responsible?

A. Not the mother, only the father.

Q. But why not the mother?

A. It is the father who is the head of the family and the mother has no voice in the matter. It is the father who is generally educated and thinks better. The mother will only follow the commands of her husband.

Q. If there is no father?

A. The male guardians should be made responsible.

Pt. Kanhaiya Lal: If we have a law fixing the minimum age of marriage and a law joining the age of consent would you like to have a system of

registration of marriages, i.e., record of all marriages being kept by a prescribed authority giving the names and ages of the marrying parties?

A. Yes.

Q. Who should be the registering authority, the Municipal Board, the District Board or the Executive authority or a separate Department?

A. Not a separate department, that would be too costly.

Q. If one rupee per marriage is charged the registrar can be paid out of that fee.

A. Our country is so poor that I would not agree to add even one rupee to the expenses. In some cases marriage does not cost even Rs. 25 and I would not add one rupee more to it.

Q. What is the agency then that you would recommend?

A. The Municipal Boards if possible, otherwise the executive authority.

Mr. Yakub: Would you make the Patwari responsible.

A. The patwari is hopeless.

Pt. Kanhaiya Lal: On whom would you place the obligation to report?

A. On parents of both the husband and the wife.

Q. Also on the priest?

A. The priests poor persons, are often so illiterate that I would not place the obligation on them.

Chairman: You say people have some objection to a law of marriage but they won't so much object if we raise the age of consent?

A. Yes.

Q. And you have said the age may be fixed at 16?

A. That is an age to which they might be induced to agree, to which they might be brought round.

Q. Can you suggest any method by which marriages may be permitted at any age and yet consummation may be effectually postponed till 16?

A. Goana can be penalised.

Q. But Goana is going out of use?

A. In the majority of cases you will find that it does take place and it will be an effective check if it could be postponed.

Q. Would the orthodox people agree to an interdiction of the girls being sent to their husbands' houses till 16?

A. They will have to be induced to agree to it.

Q. But supposing there is a law like that, no matter when you marry a girl she is not to be sent to the father-in-law's house till she is 16 complete, that would test their sincerity?

A. Yes.

Q. You think such a law would not wound the feelings of the orthodox?

A. It would, but it has to be done. If you want to improve the manhood and womanhood of the country we have to take some hard steps.

Q. Have you taken note of the fact that in a law of age of consent there is a possibility of great interference in domestic affairs anywhere between 13 and 16?

A. In the beginning there would be, but by and by we shall settle down to that mode of life. We won't feel it afterwards. Take the case of those families where girls are married at 14 or 15 even now. They are growing in number.

Q. You mean to say they are more than 10 per cent.?

A. It would be about 10 to 15 per cent., but the number is growing.

Q. There is a large number where this practice is absent?

A. We have to try to bring them round as early as we can.

Q. The other alternative is to have social propaganda?

A. They will never come round without any law.

Q. You say 15 per cent. have come round.

A. It has taken perhaps a 100 years or more to bring them round. Another two centuries will be required to bring the others round.

Q. We are told that there are some shastric injunctions against deferring of consummation beyond puberty?

A. As I said excepting that one shloke in Manu I don't know of any.

Q. Not one, there are twenty at twenty different places.

A. May be, but it is nowhere said in so many words that marriage must be consummated at a particular age. I think the society which is regarded as very orthodox among the Hindus also says that no consummation should take place before 16.

Q. There are texts which say that consummation must take place within 16 days of puberty?

A. The time has come when they have to be ignored.

Mrs. Beadon: Can you give details of cases which you say you have heard of injury having taken place on account of consummation at an early age?

A. I do not remember the details.

Mrs. Nehru: I want to know whether there is a text by which we can judge what is 'apat kal' and what is not?

A. That is a very difficult question to answer. 'Apat kal' is when country is in danger, when the nation is in danger of suffering.

Q. I suppose it remains with the discretion of the person to decide?

A. Not to the individual but to the community at large. But strictly speaking every individual has to decide for himself.

Q. You have said that the age of the girl at which goana is performed varies to custom. What is the basis of that custom?

A. If in one family Goana was performed at 8 and the girl became a widow at say 10 or 12, they will say that we will fix the age for Goana a little later. They will do as it suits them. If at a particular age of marriage or Goana the girl became a widow, in the case of other girls they would postpone it. It is all according to custom in a particular family.

Q. How will the punishment suggested by you affect the Marwaris, Bankers and shopkeepers?

A. So many are anxious to get contracts from Government which can be refused in the case of breaches of this law. I would make it as wide and as extensive as possible so as to reach every sort of community.

Q. But how are we to know that crime has been committed in such and such a house?

A. If you make it wide enough it will be in the interest of persons who are jealous of those who commit the offence to go and report.

Q. There are many difficulties here. In the first place everybody won't be affected by that punishment for instance the shopkeepers are not anxious to have contracts from Government and even if they are who is to come at the nick of time and say that such and such a person has committed the offence and should not be given the contract. .

A. It will be very difficult, I admit.

Q. Along with that won't you agree to have fine or better still to have bonds for punishment?

A. I would agree to any suggestion on those lines. I am prepared to make it as hard as possible.

Q. Of course you won't agree to imprisoning the man?

A. That will be spoiling the life of the couple.

Q. Would you agree to imprisonment in case of injury when the girl is below 12?

A. There of course imprisonment will have to be provided.

Q. What is the maximum punishment that you would suggest in that case?

A. I have absolutely no objection to any imprisonment in that case. It may be as high as the Committee can agree to.

Q. If you agree to the bonds for keeping the husband and wife separate do you think there will be no difficulty in keeping the girl away from her husband's house?

A. There will be in the beginning. So often girls belong to very poor families and have no relations and some arrangement will have to be made to provide for their maintenance. It will not be an easy job.

Q. But still you don't think the difficulty will be so great.

A. It would be, but it is worth trying.

Mr. Mitra: What is the age for marriage that you would recommend?

A. I would recommend 15.

Q. Are you ready to allow a man to go to the magistrate and apply for exemption where he is anxious to have the marriage early on account of some reason or another. There may be some hard and exceptional cases where the father is the only guardian and is very old and thinks that after him nobody will take care of the girl?

A. Then he may be allowed to marry the daughter.

Q. If a man pleads that he sincerely believes that it is against shastras not to marry a girl before puberty would you exempt those cases?

A. Yes.

Q. In other cases will the marriage be invalid or penalised?

A. Being a Sanatan Dharmi it is difficult for me to say that the marriage would become invalid.

Q. You will penalise it by means of imprisonment or fine?

A. I would not provide for imprisonment.

Q. You want only fine?

A. Fine, as heavy as the circumstances of the man permit, otherwise for the rich it would be no punishment at all.

Mr. Shah Nawaz: Suppose a legal *de facto* guardian of a married girl were to send her to her husband's house would you make it an offence on the part of the legal guardians?

A. I would.

Q. What punishment would you give?

A. In the beginning it will have to be a mere fine. It is difficult to say whether the marriage has been consummated or not.

Q. Do you think this will be acceptable to the people?

A. I am afraid nothing will be acceptable to the people unless a very strong effort is made to popularise all such legislation.

Q. Would you advise that at the time of marriage the respective legal guardians should be made to execute the bonds the violation of which would be regarded as an offence?

A. That will make it much too cumbersome, I am afraid.

Q. But you realise that the legal guardian of the girl can send the girl to the house of the husband secretly and who is going to detect it?

A. It will be for the committees that will be set up.

Q. How would the committees and sub-committees work in the rural areas?

A. Even if there is a single individual who takes interest it will be for him to work and report such cases.

Q. Do you think it will work in the rural areas?

A. With the spread of education it would.

Q. But at the present moment how would it work?

A. At present I am afraid it will not be very easy.

Q. Don't you think therefore that we should take courage in both hands and have a law of marriage?

A. You will find it more difficult for you to carry the orthodox with you with regard to the higher age of marriage than the age of consent.

Q. But the latter will remain a dead letter?

A. I suppose every effort is being made to spread education and we might expect better results.

Q. But that is a long process?

A. Not necessarily. Japan has progressed in education within a few years and there is no reason why India should not. If proper efforts are made 5 years should be quite sufficient.

Q. At any rate you recognise that the law of marriage would be much more effective than the law of consent?

A. It would be.

Q. Don't you think it will be acceptable to the women generally?

A. That is for the women to say.

Q. Don't you think it will be acceptable to the educated classes?

A. To the educated classes it would be.

Q. Don't you think it will be acceptable to the Kashatriyas and Brahmins?

A. So far as Kashatriyas are concerned girls are married at a very advanced age. Among them girls are already married at 20 and sometimes 25. Kashatriyas would not object.

Q. Will the agitation be very strong among Brahmins?

A. It would be I am afraid but that all depends upon the agitators concerned. There is in this province a body called the Bharat Dharma Mahamandal. They will object to every advance you propose.

Q. What is the underlying idea of these pre-puberty marriages.

A. The idea is that no girl should get menses in her father's place otherwise the father and so many generations above go to hell.

Q. Is it not a fact that a considerable number of marriages are performed after the girl attains puberty?

A. Hardly 10 to 15 per cent.

Q. Is it not a fact that many cases of puberty are concealed.

A. In about 25 per cent. cases of these 15 per cent. puberty is concealed.

Q. Those people at any rate will welcome the law?

A. They are already prepared to go beyond puberty by a few months and if you enact the law it will not be much.

Q. What is the percentage of those who will be ready to agitate against the law of marriage?

A. I will not be surprised if you get more than 50 per cent. of the orthodox people who will agitate.

Q. But how many orthodox people have we?

A. That is a very difficult question.

Mr. Bhargava: Generally the people among whom the custom of pre-puberty consummation is prevalent are those who resort to pre-puberty marriage?

A. In my experience I do not know of any community in which pre-puberty consummation is prevalent.

Q. But from the very nature of the fact that there is pre-puberty marriage it follows that there will be pre-puberty consummation?

A. It is not necessary that marriage must be consummated immediately after marriage.

Q. It can happen?

A. I know of certain communities among whom marriages are performed before puberty but no consummation takes place.

Q. In all cases in which pre-puberty consummation takes place there must be pre-puberty marriage?

A. Yes.

Q. If that is so, if you increase the age of consent or fix the marriageable age the agitation will be confined to those people among whom early marriage is found?

A. I know of a high individual who in his own case married his girls at a late age but he joins his efforts with those who agitate against it?

Q. So with a few exceptions of those who by their conduct belie their convictions that will be so?

A. They are not exactly belying their convictions. If they represent a certain orthodox section they imagine that they have to support that agitation.

Q. What I mean to say is that both these proposals will affect generally speaking the same kind of people?

A. To a certain extent, yes.

Q. If that is so, the agitation is bound to come, why not have it with regard to the marriageable age?

A. But this agitation will be different from the agitation against the age of consent law.

Q. What will be the difference?

A. So far as I can see a larger number of the orthodox people will be prepared to agree to the raising of the age of consent than fixing the minimum age of marriage. If you raise the age of consent and do not raise the age of marriage probably a large section of the orthodox community might become agreeable to it.

Q. I understand you object to this fixation of the minimum age of marriage from the point of view of agitation?

A. Yes.

Q. And no other?

A. No. Personally I am prepared to say that you may fix the age at 15.

Q. Without any exception?

A. Yes.

Q. You recognize that the age of consent by itself would be a dead letter and very difficult to enforce?

A. I would not say a dead letter.

Q. Almost a dead letter?

A. Not necessarily. I believe it can be made effective. It all depends upon the committees that you form in the various centres.

Q. May I know how you propose to prove the offence. The wife will not come forward to give evidence, the relations and parents would not do it?

A. Medical evidence will do it.

Q. Do you think that medical evidence will be available even after two or three days?

A. If the girl is of a tender age the evidence will be available.

Q. Suppose a girl is 14 or 15, do you think in that case there will be any marks of violence on her person?

A. Probably not.

Q. So that medical evidence is out of the question?

A. Ordinarily speaking medical evidence will be available, but it will not be so easy to get it. You can make it penal to send the girl to the husband's house till a certain age.

Q. Again, is that practical at all? Who would report?

A. The same who would report in the other case.

Q. That is the difficulty, nobody reports.

A. In that case what would you do?

Q. The other remedy I have said is to fix the age of marriage?

A. I am afraid that will not be so easy.

Q. What form will this agitation take?

A. I am not going to be a party to that agitation so I can't say. This will take the usual form of meetings, memoranda and deputations and those sorts of things.

Q. Nothing further I believe?

A. It all depends upon these pandits. Serious objections have been raised to the Religious Endowment Committee appointed by the United Provinces Government.

Q. If there is to be no law of age of marriage on account of those difficulties, would you have as a substitute or as an auxiliary to the age of consent law a provision on the statute book for getting bonds from the persons who it is expected are likely to commit an offence of this nature and the law might presume that as soon as the wife goes to her husband sexual intercourse will take place.

A. Supposing you take a bond what guarantee is there that it will be adhered to?

Q. The breaking of the bond will be another offence?

A. In that case I can't object.

Q. Even in that case supposing the girl becomes pregnant would there be not attempts at abortion?

A. Yes.

Q. And supposing the child is born will it not be suffering from the effects of sorrows?

A. Yes.

Q. But would it be more mischievous than conviction?

A. In marital cases I would not send the boy to jail. I would see that the man is debarred from all emoluments and service under Government. Personally I think that would be a very strong check because 90 per cent. of the educated people are anxious to get employment.

Q. But the number of educated is very small. So ultimately it will affect a very small number of people.

A. But others can be debarred from getting Government contracts. Then Takavis can be stopped.

Q. Do you think this is practicable? Do you think the Tehsildar or the Kanungu will have a list of persons who have been convicted under this offence?

A. But rivalry will be so great that I think the people of the village will make a complaint.

Q. Suppose a man is 40 years and the girl is 12 or 13 years old would you be satisfied with fine in that case?

A. In such cases I would not be.

Q. Are there many cases of unequal marriages in U. P.?

A. There is certainly a large number, I would not say 'many'.

Q. So that this class of cases will have to be dealt with separately?

A. Yes.

Q. I understand then that your proposal is that you will provide both fine and imprisonment and leave it to the discretion of magistrates to administer it?

A. It will come to that.

Q. It has been suggested that district judges be authorised to issue injunctions prohibiting marriage before the prescribed age at the instance of persons interested in the girl?

A. That comes to fixing the marriageable age.

Q. That would be an auxiliary?

A. Once you fix the marriageable age you may have this auxiliary.

Q. Will you also change the law of guardianship so far as the husband is concerned?

A. I think it ought to be.

Q. Then you are of opinion that a boy below 18 should be exempted from punishment?

A. Yes.

Q. At present the age which gives absolute immunity to the boy is 7. Do you want to make it a general rule that a boy below 18, should not be punished?

A. But I would drag his parents.

Q. Suppose he is fatherless?

A. Any guardian should be punished.

Q. But would you use the law indiscriminately? Suppose the boy is living separately?

A. Then he will be responsible.

Q. What about the father of the girl?

A. I would not punish him.

Q. If he is a party to sending the girl? In fact the difficulty is that the father of the girl cannot resist the demand of the parents of the boy?

A. You can provide for it in the law.

Q. Supposing there is a threat of remarriage?

A. But if there is a law to the effect that the girl will not be sent there will be no fear.

Q. Supposing there is a threat in spite of that? I therefore suggest that there should be marriage law.

A. I have been telling you that it will be more difficult to carry the orthodox people with you.

Q. You have said that extra-marital cases should be tried by joint magistrates?

A. I do not want ordinary deputy magistrates there.

Q. Do you want that the commitment stage may remain or not?

A. They should be committed by the Joint Magistrates.

Q. Who commits them now?

A. Any First Class Magistrate.

Q. You want that all these extra-marital cases should also be tried in camera?

A. No, I am prepared to give them as much publicity as possible.

Q. But there would be a good deal of scandal?

A. I want as much publicity as possible.

Q. But the girl will also suffer?

A. That is right.

Q. So would you prefer that ordinary statements of the girl should be taken in camera?

A. Yes.

Q. In both kinds of cases?

A. Yes.

Q. As regards your suggestion that sub-committees should try these marital cases may I know how you would reconcile this with the objection that there should be no multiplication of courts so that the dignity of the ordinary courts may not be lessened?

A. The only trouble is that there will be greater danger of the family being ruined and therefore if these committees try that would be better. If the husband is convicted he is not going to lead a happy life.

Q. If conviction by itself ruins that will be in every case?

A. But in the case of a committee it will be more private. It will not be given so much publicity.

Q. Is that the only reason why you have these sub-committees.

A. Yes.

Q. Otherwise there is no inherent defect in the present courts?

A. No.

Q. You have confidence in the magistrates?

A. Yes.

**Written Statement, dated the 13th August 1928, of Pandit BEHARI
LAL NEHRU, Government Pleader, Allahabad.**

1. Yes, there is dissatisfaction specially as regards cases outside the marital state.

2. (2) An advance on the present law can be made with advantage and is bound to give satisfaction to a large majority of people. Under section 363, 1. P. C. (kidnapping), a girl is deemed to be a minor until she attains the age of 16 years and under section 366A, until she attains the age of 18 years. There seems to be no reason why the age of consent for the purposes of rape, at least in cases outside the marital state, should be lower than it is for kidnapping. It is easier to seduce a child of tender years than to kidnap her. Girls can be guarded against kidnapping but it is almost impossible to guard them against seduction. The Age of Consent for extra-marital cases should be raised to the same level as under section 366A, *viz.*, 18 years. There seems to be no actual difference between the two cases. Under the present law you cannot touch the actual seducer if the girl is over 16 but you can punish the procurer if she is under 18, although the seducer is more to blame. No one can complain on any ground whatsoever, moral, social or religious, if the Age of Consent is raised to 18 years, for extra-marital cases. This would protect the girls from actual seducers as they have been protected from procurers.

3. Rape cases do frequently come before the courts in this district (Allahabad). Some cases of rape never see the light of day as they are naturally suppressed by the parents of the girls. Others are not sent up because the age of the girl cannot be definitely determined specially when it is on the border line. Even experts find it difficult to say definitely if the girl is 13 or 14. The raising of the Age of Consent to 18 years can harm no one but would protect the girls from seducers and would confer a real boon on parents. The recent raising of the Age of Consent to 14 years has to a very little extent succeeded in reducing the number of cases outside the marital state.

4. No case of rape by a husband on his own wife has ever been brought to my notice during nearly 30 years of my practice mainly on the criminal

side of the profession. Such cases are hard to detect obviously, if they ever happen in my part of the country. I believe people are generally careful not to consummate marriage till the Age of Consent is reached. The event is not generally further postponed as is evident from the large number of girl mothers who themselves are mere children. Even in the lower standards of girls' schools we find a fair number of such girl-mother students. If the age for the consummation of marriage is raised to 16 years it would, I think, automatically stimulate public opinion in the direction of putting off marriage to within a few months of that age.

5. I think, generally about the age of 13. The age does differ in different classes of society but the difference, as far as I know, is not very marked.

6. During my long practice I have had to deal with a large number of rape cases both as a prosecutor and a defender. In a very large number of cases rape was committed on girls between 7 and 12. In cases where the girl was older than 12 the prosecution has almost always failed on the plea of consent raised by the accused. In my district rape cases are tried by jury and they convict only such cases in which the girl has not attained the Age of Consent as fixed by law. It will thus be found that rape is committed on girls before and in some cases about the time that puberty is attained. As I have said above no case of rape by a husband has ever been brought to my notice as a public prosecutor or a private practitioner.

7. No. This custom of early consummation of marriage is a relic of the period when handsome virgins, married or unmarried, were snatched away from their homes for the harems of powerful nobles.

9. No, the attainment of puberty is not a sufficient indication of physical maturity to justify consummation of marriage. It should be postponed for about 3 years. The girl should be at least 16 years of age before consummation of marriage is effected. At this age only consummation can be effected without injury to her own health and that of her progeny.

10. 18 years at least.

13. I am sure there is a general feeling in favour of an extension of the Age of Consent for extra-marital cases, but it seems to be divided equally otherwise.

14. So far as I am aware they are not in favour of early consummation of marriage.

15—16. Yes. Sometimes difficulties have been experienced in determining the age of girls in rape cases, specially when the age was on the border line. In some cases the age was determined by a reference to the birth register of the village, where available. In one case neither the parents of the girls nor any other member of the family or their witnesses could fix the age of the girl. They variously estimated the age from 13 to 20. The medical opinion was that she was about 14, whether above or below could not be definitely determined. The birth register was fortunately forthcoming. It showed the age of the girl to be 13½. But the parents of the girl could not even enumerate all their issue in order of their birth (they had a large family of several daughters and sons). It was impossible to determine to which of the girls the entry in that register related. If the Age of Consent is raised to 16 and 18 years, for marital and extra-marital cases respectively, this difficulty would be minimised.

17. Marital and extra-marital offences should be separated in so far only that if a husband has sexual intercourse with his own wife, she not being under 15 years of age but under 16 years he should be punished with simple imprisonment for one year only or with fine or both. In other cases the present law should be retained. Such offences should be bailable and the accused should not be arrested without a warrant.

18. There should be no difference in trials. A husband accused should also have the benefit of a sessions trial. It will also be a safeguard against improper prosecutions.

19. In cases of marital offences the following safeguards may be provided against improper prosecutions:—

- (i) Investigation to be conducted by a police officer of senior rank preferably a D. S. P. or A. S. P.
- (ii) Previous sanction of the District Magistrate to be obtained for such prosecution.
- (iii) Medical examination of the girl to be conducted on the express orders of the District Magistrate.
- (iv) Trial of the case by the Court of Sessions.

20. Penal legislation fixing a higher Age of Consent for marital cases would certainly be more effective than legislation fixing a minimum age of marriage. The higher Age of Consent would be in consonance with public opinion.

21. I prefer to rely on the strengthening of penal law to secure the object in view.

Oral Evidence of Pandit BEHARI LAL NEHRU, Government Pleader, Allahabad.

(Allahabad, 16th January 1929.)

Chairman: How long have you been Government pleader?

A. For about 12 years now.

Q. Does that mean prosecuting cases in Sessions?

A. Only in Sessions.

Q. For how many years were you practising in Rai Bareilly.

A. For about 18 years.

Q. Have you reason to believe that the law of Age of Consent standing at 13 is broken in a large number of cases?

A. Not to my knowledge. No case of an offence by a husband of that nature has ever come to court.

Q. But they occur?

A. Not to my knowledge. I have never even heard about it.

Q. Have you knowledge about village life only or city life also?

A. I know very little of village life. I know mainly about city life.

Q. You mean to say that you have never heard of consummation before 13 complete?

A. No, excepting in some cases in Bengal.

Q. Not even lower classes?

A. No.

Q. Is it not a fact that where marriage of tender girls, below 12 takes place there is consummation soon after puberty?

A. I think in most cases it is.

Q. Then puberty is rather the point by which they go?

A. That is so.

Q. There is no question of the age of the girl?

A. They don't know the ages of their girls.

Q. What do you think is the age of puberty in this part of the country?

A. Somewhere between 13 and 14. It is sometimes later and sometimes earlier.

Q. Do you think there are a good number of cases between 12 complete and 13 complete?

A. Some of course but not many.

Q. Is it a very insignificant number or a considerable number?

A. A fairly good number, I think.

Q. In those cases don't you think that soon after puberty consummation takes place?

A. So far as I know such cases are amongst very low class people.

Q. And also among those who marry a second or third time girls of tender ages?

A. They are precipitated, I know.

Q. In answer to Question No. 20 you say, fixing a higher Age of Consent would be more effective than fixing the minimum age of marriage. Is that really what you mean?

A. So far as marital cases are concerned, certainly.

Q. What age would you fix for marital cases?

A. 16.

Q. Supposing the Age of Consent is fixed at 16, don't you think there will be a very large number of cases of consummation before 16?

A. Not necessarily.

Q. Why not?

A. People are generally law abiding and would not break it.

Q. You said the age of puberty is the index for consummation rather than the age of the girl and if you raise the Age of Consent to 16 don't you think consummation is possible in a very large number of cases before that? Girls attain puberty generally at 12 or 13.

A. There is possibility of consummation.

Q. You say that puberty is the index round which consummation centres, and it is not a question of the age of the girl and you want to raise the Age of Consent in marital cases to 16. Supposing we do so, then there would be a certainty of a large number of cases of consummation before that age. Do you think that if a girl attains puberty at 13 or 14, and the girl and the husband remain under the same roof and with the environments of a Hindu home it is possible for them to refrain from consummation?

A. In cases in which the husband is a boy it is possible.

Q. If the girl is 20 do you not think that the boy will be 20?

A. If they are boy and a girl it is possible; but if the man is advanced in age and the wife a young girl it will be impossible.

Q. Even as it is there are very few boys of 20 who have kept their Brahmacharya?

A. Yes.

Q. How do you then say that consummation will not take place?

A. The parents will be in the house.

Q. Even now there are parents in the house, and do you think there is restraint?

A. In these cases marriage is consummated earlier with the consent of the parents.

Q. And you want to raise the Age of Consent for the protection of the girl. How is the protection to be effectual?

A. Some means will have to be found.

Q. Supposing the age is raised from 13 to 16, there will then be a very large number of cases of consummation before that age and there will be breaches of the law. How will these cases come to light?

A. In the same manner in which they come to light now.

Q. They do not come to light now, and that is the objection. Cases do occur now, but they are not brought to light.

A. If such cases do occur, it is for those who know it to bring them to light.

Q. It is nobody's business to report, and you cannot prove it because it is a secret act. The law is ineffective at 13 now. That is the complaint, and hence the need for this enquiry. People say it is not effective, and it cannot be effective.

A. If a girl gives birth to a child under the age of 16 there is the proof. That will be one proof and a positive proof.

Q. But there will be cases in which girls may not become mothers and yet the law might be broken? Do you think there is any method of getting these cases to light?

A. So far as the towns are concerned, you can do something; but what about the rural areas? I cannot conceive of anything.

Q. Supposing the age of marriage is fixed as in Sarda's Bill, do you not think that would be more effective. There would be no marriages at all, and hence there will be no question of consummation.

A. Why should we assume there will be no marriages? Supposing there is a Bill and ten thousand marriages follow, whom are you going to punish?

Q. Sarda's Bill punishes the parents of the girl and the priests and abettors, and certainly the parents of the girl. Do you expect that if that is so, there will be ten thousand marriages and ten thousand persons daring to go to jails?

A. Supposing they do want to go to jail on this question as they have gone to jail on some other questions, if you are prepared to go to that extent I have no objection.

Q. Do you really think that if we enact a law like that there will be persons like that willing to go to jail?

A. Yes; I think there are some persons who will do that.

Q. Do you think it will be half a dozen?

A. In a town it may be half a dozen, and in the whole of India there will be several dozens.

Q. From your experience as a Public Prosecutor can you say that if a law of marriage is enacted and the age is fixed at 14 there will be a large number of people who will break the law?

A. Yes; in most cases you will not be able to determine the age of the girl.

Q. That is common both to the Age of Consent law and the marriage law and other sections of the Penal Code which require the age to be proved.

A. If birth registers are more correctly and honestly kept that will be a great check; but they are not very well kept nowadays. In some parts of the country they are not kept as permanent records.

Q. We are told that in towns they are kept fairly well?

A. In a sessions case here a man had half a dozen daughters

Q. You have referred to that in your written statement. If you make it a rule that the name of the child must also be given?

A. Some people do not give the name of their children till a very late date.

Q. There may be a subsequent entry and it may be made compulsory. Do you not think that the difficulty will be minimised if we take such steps as are likely to make birth registers more reliable?

A. Yes.

Q. Have you reason to believe that the people will accept the law of consent with equanimity?

A. I think they will accept it with much more equanimity than the law of marriage.

Q. Do you think they will agree if you say that a girl can be married at any age, but that she should not be sent to her father-in-law's house till she completes 16?

A. Why not she be sent to her father-in-law's house?

Q. Because there will be consummation. If you want the law of consent to be effective, then the girls should not be sent to their father-in-law's house.

A. I think there will be great dissatisfaction then.

Q. Then do you not think that the law of the Age of Consent will raise the same amount of dissatisfaction as the law of marriage?

A. No; why should it?

Q. One method of making it effective is by saying that no girl should be sent to her father-in-law's house till she is 16, but you say it will cause dissatisfaction. Then can you suggest any other method of making the law effective?

A. If there are cases of rape under 16 by the husband, let the father of the boy or guardian be responsible for it.

Q. But how to check it?

A. I think it will be a hardship on the people to exclude one of the members of the family, namely, the girl, on ceremonial occasions.

Q. Have you any other method of making the law of effective?

A. To my mind this law can be no more effective than other laws.

Q. There is this difference between other laws and this law, namely, that the act is a secret act, and it is only the husband, the wife and one or two other relations know the fact. Therefore there is a great difference between this law and the other laws.

A. Take murder for instance; you have penalised murder, but murders do occur.

Q. The case is different. Can you suggest any remedy which will make the Age of Consent effectual so that at least 90 per cent. of the cases might be covered?

A. You can make a law saying that before consummation of marriage the girl should obtain a medical certificate. But it is hardly practical. I cannot suggest any remedy unless Government is prepared to spend vast sums of money on medical examination and so forth. I suggest it is impracticable in the sense that the money will not be forthcoming.

Q. Do you think that it is difficult to make the law of the Age of Consent effectual?

A. In the case of husbands it is difficult.

Mrs. Beadon: With reference to Question No. 11, do you know of cases of young girls who were mothers at or below 15 and have suffered or their babies suffered?

A. I think I have, but I cannot cite definite instances.

Mrs. Nehru: What use do you think it would be to raise the Age of Consent if it cannot be made effective by any means?

A. In course of time it will be effective as the people come to know its benefits.

Q. What reasons have you to suppose it will be so?

A. In course of time they will know it. Even now many people have taken to having late marriages.

Q. Do you think it is because of the existence of the law on the Statute Book?

A. Some people would consider it a bar to consummation of marriage before the prescribed age. The number may be very few but there will be some people who will respect the law.

Q. Do you think there are many people who know about the existence of this law?

A. I think as it stands at present every one knows.

Q. Do they know the law relating to marital relations?

A. I do not think so far there has been any difference between marital and extra-marital relations. I think people know their liabilities under the law as at present in force.

Q. Do people know the existence of the law in marital relations as distinct from the extra-marital relations?

A. I think they do. They know both.

Q. Do the accused plead consent?

A. Even in undefended cases I have seen the accused plead consent.

Q. Do you know of actual cases of consummation of marriage or performance of the marriage postponed on account of this bar under the law?

A. I know of no such case.

Q. What is then your reason for saying that it has stimulated public opinion?

A. I have not said so.

Q. You said that the people knew the existence of the law and were governed by it.

A. I simply said that they know the existence of the law.

Q. If you cannot say whether they have acted upon it so far, how can you say that they will act upon it in future?

A. I have heard of no cases; therefore I assume that there has been no breach of the law and they respect the law. I have not come across even one or two such cases.

Q. Do you mean to say that they have not come to court?

A. They have neither come to court nor have they come to the knowledge of the people living round about if not at a greater distance.

Q. Do you apply these remarks to the sphere of your experience only?

A. Yes; I cannot say anything about other people's experience.

Q. Though the cases under section 376, have been few, yet some of these cases have come to court. There was one case recently reported which took place in Allahabad High Court.

A. I do not know that.

Q. And many more cases occur than those which come to court?

A. I have experience of half a dozen districts both in U. P. and Oudh and in these districts I have not come across these cases.

Q. You say in your statement that extra-marital cases do not come to court and you have given certain reasons. Can you suggest any means by which the law in extra-marital cases can be made more effective?

A. Every party first conceals the thing. Only in cases where they cannot conceal it, they come to court.

Q. Do you think that in the present way of conducting the cases there is room for improvement?

A. I think the present procedure of conducting these cases is good enough.

Q. Some people have suggested trying these cases on the spot by lower courts or magistrates.

A. I would not let the cases be tried by the magistrates.

Q. Do you not think it is a great hardship to ask people to go to the higher courts?

A. But they get better and more impartial justice.

Q. Even in extra-marital cases have you no other method to suggest besides raising the age?

A. No; I cannot suggest anything.

Mr. Mitra: Would you like to have a marriage law?

A. No.

Q. Can you suggest any means by which the Age of Consent law might be made effective?

A. No.

Mr. Shah Nawaz: Why are you not in favour of a marriage law?

A. It would cause much more dissatisfaction than the Age of Consent law.

Q. Who would be dissatisfied?

A. The parents of both the parties.

Q. Why? Would they like to marry girls before puberty?

A. Yes; many people like to marry their girls early even at 5 and 6.

Q. Why? Is it on account of the Shastras or otherwise?

A. Many people who know nothing about the Shastras marry their girls at 5 and 6. It is all due to custom.

Q. Do you not think it is an evil custom?

A. So far as I am concerned, it is an evil custom.

Q. Do you not think then that it is the duty of the State to eradicate it?

A. Let the State eradicate it if it is prepared to meet dissatisfaction.

Q. But do you not think that the evil should be checkmated?

A. Yes; but it is for the state to find out the remedy.

Q. Do you not think that it is only the orthodox who will create dissatisfaction?

A. Yes; but there are other people also who marry their girls early.

Q. Would there be dissatisfaction amongst women?

A. Yes; I think so.

Q. Will not the law be welcomed by educated women?

A. It will be welcomed by some of them.

Q. Have you heard of the resolutions passed at the various Conferences of women?

A. There have been resolutions, but they have not been carried out.

Q. Do you not think that educated people would like that there should be some law?

A. Educated people believe in reforming others, but not themselves.

Q. Do you not think that if we have a law it must be made effective?

A. If you enact a law it must be made effective. But the question is how to make it effective.

Q. Do you not think that after all a law is the right thing?

A. The easier of the two things would be legislation about marriage.

Q. Then why not adopt it?

A. I am not against it personally.*

Q. What then should be the age of marriage?

A. Not less than 16; let marriage and consummation take place at the same time.

Mr. Bhargava: Do you think that if the law of marriage is enacted, some people will break the law?

A. Yes; surreptitiously.

Q. Cannot that be said of any law?

A. Yes.

Q. Will there be an open defiance of the law?

A. I do not think there will be an open defiance of the law; there would be a breaking of the law, to a great extent; but that would be ignorantly.

Q. Do you think that due publicity should be given to this law?

A. Yes. But ignorance of the law must be made an excuse.

Q. Otherwise do you think there will be any serious agitation or riots?

A. No; I do not expect anything of that sort.

Q. Are you really in favour of the Age of Consent law?

A. Yes.

Q. Do you think it is the only remedy?

A. I will go gradually up. I will first penalise consummation below a certain age.

Q. At present if a girl is first seduced and then raped, it is very difficult to prove rape because after the seduction she will be in adverse environments, accompanied by friends of the accused. You cannot punish the man for rape unless the age for kidnapping is raised to 18. Do you not think so?

A. Yes; I have said so in my written statement. I have said that it is an anomaly.

Q. Would you make the cases under the Age of Consent law cognisable?

A. No; I would not make them cognisable in marital relations.

Q. Would you not make it cognisable even below 12?

A. I think cases below 14 should be made cognisable.

Q. You have said that there should be sanctions. Do you realise that since the amendment of the Penal Code in 1923 the laws relating to sanctions are more or less regarded as engines of oppression? Would you therefore like that the Crown should take up these cases, and sanctions should be dispensed with?

A. Yes; provided the Crown investigates the cases without the police. I have no objection to the Magistrate going himself and investigating the case.

Q. In your experience have you not found that if a case is investigable by the D. S. P. it is always the subordinate officers who do it in the name of the superiors?

A. They can even say that they do in the name of the Inspector General of Police.

Q. Do you want these cases to be investigated by A. S. P.'s?

A. There should be some check so that the minor police officials might not worry people.

Q. You say that there should be medical examination of the girls. Do you not know that at present every girl can object to medical examination by a man?

A. There are women doctors also. •

Q. The girl can refuse to be examined even by a lady doctor.

A. If the girl is a minor her consent is no consent, but if a girl is a major her consent is everything. Therefore if you want to get a person examined, there should be some check.

Mr. Md. Yakub: If there is a law of marriage, would you make cases under the law cognisable by the police?

A. No; I would make them non-cognisable. What have the police got to do with these cases?

Q. To whom would you give the right of complaint?

A. Any person who has the right of complaint under the present law of consent. At present any person can set the criminal law in motion. Let the Police do it if they like but they should not interfere otherwise.

Q. There may be frivolous complaints. Can you suggest any safeguards?

A. Under section 250 of the Cr. P. C., there is compensation to be given to the accused. Let the compensation be raised if you like.

Q. What punishment would you propose for the infringement of the marriage law?

A. I would prefer a sentence of imprisonment to a sentence of fine. It may be fine as well as imprisonment and it should be left to the discretion of the Magistrate to award suitable punishment.

Q. Would you punish the boy or the parents?

A. The parents of course.

Q. Whatever the age of boy might be?

A. If the boy is a major he will be punished as an abettor.

Q. Would you also punish mothers along with fathers?

A. I would not unless the mother happens to be the only guardian.

Q. What about the Pandit or the Kazi?

A. They are probably the greater sinners. They must be punished as abettors.

Q. Would you like cases of infringement of the marriage law to be tried by a special court consisting of a judge and two prominent citizens of the place to sit as co-judges?

A. So long as the trying authority is above suspicion it does not matter by what name you call him. If the people have confidence in the tribunal it does not matter whether it is a Magistrate or a tahsildar.

Q. Do you think that in these marital cases people will have more confidence in these matrimonial courts?

A. Let the cases be tried by a special jury then; by a court of sessions and a special jury.

Q. Do you not want a separate matrimonial court?

A. I do not think it is necessary unless the ordinary officers have no time to attend to these cases.

Mr. Kanhaiya Lal: Under the present law cases under 12 go to a sessions court and above 12 to a Magistrate. Instead of having these two different forums do you not think that a separate matrimonial court consisting of a Magistrate and two non-officials acting as co-judges would inspire better confidence?

A. I think it will be an anomaly. It may create better confidence, but I think it would be too cumbersome. I think there can be one trying officer and a jury.

Q. Is it your idea that even cases above 12 should go to a jury?

A. Yes.

Q. Will it not prolong the trial, and necessitate a committal by the Magistrate? If these ordinary cases have to be committed to the sessions, it will prolong the agony of the husband.

A. In such cases let the Magistrate take cognisance of the case and then send it up.

Q. Will not the girl be scandalized, if she is dragged from court to court, awaiting the trial of her husband?

A. All cases involving a female like that would be scandals.

Q. But the scandal would be greater in this case?

A. If there has been once a scandal, I do not know how it will be a greater scandal. You cannot prevent that.

Q. If you have separate matrimonial courts all this will be avoided, and the public will be excluded.

A. I am not in favour of trying these cases in camera. It will be creating a sort of inquisition in these cases.

Q. But we are looking at the matter from the standpoint of the family to which the girl belongs.

A. I think you should leave it to the discretion of the Court to have the trial in camera in certain cases and publicly in the case of others, as the law at present provides.

Q. Is it your recommendation then that cases below 12 as well as above 12 should go to a sessions court after a committal, though the sentence in the case of cases above 12 is only 2 years?

A. Yes.

Q. What is your objection to a matrimonial court?

A. You may create a separate court, but I do not think there is any necessity for it. I do not expect such a large number of cases after you enact a law as to engage a special matrimonial court for all time.

Q. But the two non-officials will be honorary?

A. I am against honorary officers.

Q. You have said that cases above 14 should be non-cognisable. Are you not thereby reducing the chances of detection?

A. Yes.

Q. Would you make these marital cases cognisable if there is a safeguard to the effect that they should be investigated only by higher officers of the police, like the D. S. P. or the Circle Inspector?

A. All such cases, under the present law, are to be investigated by Circle Inspectors of Police. But personally I am not satisfied with the arrangement. I do not like the police to interfere between the husband and wife.

Q. Would you like vigilance societies for the detection of these cases and for doing educative work?

A. Yes. That will do some good.

Q. Should they be nominated by district authorities, or partly nominated and partly elected?

A. I think it is better that some of them are nominated and others are elected by the municipalities, district boards social reform and other recognised organisations.

Q. Do you think caste panchayats will do?

A. No; I do not think so.

Q. It has been suggested that in order to reintroduce good relations between husband and wife these marital cases might be made compoundable with the sanction of the court. Otherwise the husband might discard the wife and the wife will be ruined for ever.

A. Why should you assume that the relations between the husband and the wife will be strained. Unless the wife herself is the complainant the relations need not be strained. If you make the offence compoundable almost every case will be compounded, and the law will be ineffective.

Q. The wife will be required to give evidence against the husband.

A. The husband will, I think, have sense enough to understand that she has been forced to give evidence. But I think that in such cases the wife will rather support her husband than give evidence against him, unless the relations between them are already strained.

Q. In support of the law of the Age of Consent and the age of marriage, would you have a system of registration of marriages so that we might find out whether the law has been broken?

A. My objection is that it will be impracticable. You can do it in towns, but what about those areas which are miles away from towns?

Q. Cannot the same agency which now does the birth and death registration be employed?

A. It will be unsatisfactory, because the way in which it does its work is unsatisfactory.

Q. In some of the Native States and in French India a system of registration is going on.

A. Probably there might be provision for it. There will be difficulty about the money and the agency as well.

Q. Supposing we have a system of non-official registrars in charge of registration and a fee of one rupee is charged for each registration, and there is optional registration, do you think it will work?

A. Yes; if there is money forthcoming for it.

Q. It will come from the men reporting the marriage.

A. It will be a hardship on the poor man who will go long distances for the purpose.

Q. Supposing we allow him to send the report by post?

A. They might miscarry, or there may not be post offices in his village.

Q. You have not given us any suggestion as to how to make the Age of Consent law effective. Do you not think that this proposal will work?

A. The proposal will work if the parties are asked to give notice of the marriage to the registrar and if the registrar verifies every entry with the entry in the birth register.

Q. Do you not think it will be more difficult?

A. Why should you make the poor to go round every time there is marriage or birth or death in his house?

A. He can report to the Lambardar or the Chaukidar. But can you give us any other constructive proposal?

A. I have not considered the point fully, and I cannot say anything offhand. There were certain difficulties present in my mind, and I mentioned them.

Written Statement, dated the 8th January 1929, of the Medical Officer of Health, Municipal Board, Allahabad.

1. The state of law as to the Age of Consent is not quite satisfactory.

2. (2) Raising the Age of Consent provides a greater safeguard against the offenders. It places the girl in a safer position inasmuch as her consent then would be an intelligent consent.

3. Seduction is very frequent and rape is not infrequent. Amendment of 1925 had no marked effect. Raising the age high enough would make it effective.

4. (1) I believe no.

(2) I do not think any public opinion was stimulated in that direction.

(3) There is a tendency to put off marriage beyond 13 but I think for reasons other than raising the Age of Consent within the marital state to 13. Raising the age limit to 16 is calculated to be sufficiently effective.

5. Between 13 and 14.

Yes. With the working classes it is delayed a little longer.

6. It may be among the lower classes. Such cases very seldom come to Court.

7. I know of no religious injunction to which such a practice could be attributed.

8. Yes. It generally coincides with the consummation of marriage. It is performed generally after the attainment of puberty. How soon after it depends on the economic condition of the parties.

9. The attainment of puberty does not necessarily mean the girl's fitness for consummation of marriage. Girls after attaining puberty may yet be found to be physically unfit to discharge marital obligations. Ordinarily

consummation of marriage should be deferred some two or three years after the attainment of puberty to avoid injury to the girl's health and that of her progeny.

10. 18 years in extra-marital cases, 16 years in marital cases.

11. I know of a few instances of girls of tender age wanting in full physical development having children. These girls have poor health and their progeny extremely weak and sickly. This is not from my professional experience.

12. Yes. There can be no doubt that it is responsible for high maternal and infant mortality and leads inevitably to physical deterioration of the people.

13. I am not sure whether there was any further development of public opinion in this part of the country in favour of an extension of the Age of Consent in marital and extra-marital cases since the amendment of the law in 1925 but ever since the introduction of Sir Hari Singh Gour's bill there is considerable development of public opinion among the educated classes in favour of an extension of age.

14. There is an inclination in some quarters to favour early consummation of marriage (chiefly confined to the illiterate and lower classes).

15. Yes, the determination of age does present serious difficulties sometimes. Medical opinion of age generally is at best an approximate guess when there is very often a chance of error. Raising the Age of (extra-marital) Consent to 18 and a careful maintenance of birth registers may mend these difficulties. Illiterate people specially villagers have such a confused and vague idea of time that it is impossible to depend upon their testimony for the exact age of a girl. In most cases there are no horoscopes and when they exist it is sometimes not difficult to discredit them.

16. Yes, the difficulty can certainly be minimised thereby.

17. Yes. Marital—2 years. Extra-marital—The punishment laid down in Section 376, I. P. C.

18. Yes. Marital—Police may not arrest without warrant—Bailable—Summons in the 1st instance. Extra-marital—May arrest without warrant—Un-bailable—Warrant.

20. Fixing a higher Age of Consent for marital cases would be more in consonance with public opinion but fixing the minimum age of marriage at 16 would remove the vexed question of marital consent and will be more effective in removing many of the existing defects. But this may not be viewed with approval by the public.

21. In the ordinary course this sort of social reform should have been left to education and social propaganda but since the desired reforms which are long overdue, have not been achieved by these means it is expedient that the penal law should be strengthened.

Oral Evidence of the Medical Officer of Health, Municipal Board, Allahabad.

(Allahabad, 16th January, 1939.)

Pandit Kanhaiya Lal: How long have you been working as a Health Officer?

A. This is my sixteenth year.

Mrs. Beadon: In your answer to Question No. 11 you say that you know a few instances of girls of tender age wanting in physical development and having children and they have poor health and their progenies are weak. Will you please tell me what happened to these girls?

A. I know one case where the girl was aged about 12. She was married and she was keeping very delicate health all throughout.

Q. Do you mean to say that she was keeping delicate health subsequent to her pregnancy?

A. Yes.

Q. What about her children?

A. The children are all living.

Q. When did this happen?

A. This was a case of 20 years ago.

Q. Can you mention one or two cases that you know of within the last three or four years?

A. No.

Q. Was this girl keeping good health before her delivery?

A. Yes.

Q. What do you think about the children of these young mothers?

A. Generally all the children that I have seen born of these young mothers during this tender age, are weaklings.

Q. What was the general health of the women about 15 or 20 years ago? Do you think that the general health of women is now decidedly better than it was in olden days?

A. In olden days, they used to keep very good health which is probably not due to late maternity but is due to less worry and mental anxiety and better nourishment.

Q. Do you mean to say that the economic conditions are now worse than what they were 20 years ago?

A. Yes. Now it is very difficult to give suitable nourishment to suckling mothers.

Q. Do you find any special diseases affecting the women here?

A. Tuberculosis is very common here.

Q. Do you find it mostly amongst women or amongst the men as well?

A. It is very common amongst women between the ages of 15 to 30.

Pandit Kanhaiya Lal: Your figures suggests that there was a very heavy mortality amongst females during the ages of 10 to 15, 15 to 20 and 20 to 30 as compared with the males of those ages. Can you tell us what are the reasons for this heavy mortality amongst the females?

A. It is partly due to the effects of childbearing and partly to the economic conditions such as less nourishment and so on.

Q. Are not the economic conditions common to boys and girls?

A. Yes.

Q. Then why is there a heavier mortality amongst the females than amongst the males?

A. I admit that the economic conditions are common to both, but still there is some difference. In the cases of women, they generally get a lesser share of the nourishment.

Q. Are not children whether girls or boys treated all alike?

A. That is true but the lion's share is taken by the man. It is voluntarily given away by the ladies and they keep very little for themselves.

Q. Is this heavy mortality during these age periods not largely due to maternity?

A. I think it is largely due to the economic conditions and also partially due to maternity.

Q. What is the percentage of infant mortality to births?

A. Our statistics are under one year of age and it is practically 25 per cent.

Q. Is the mortality greater amongst the Muhammedans than amongst the Hindus or vice versa?

A. I believe we have no separate statements.

Q. Can you tell us whether the system of registration of births is working satisfactorily?

A. Not at all.

Q. What are the defects in the existing system?

A. The system is that the head of the family is primarily responsible for getting all the cases registered, but there are large omissions and many defaulters and as a check we have got our own private sources in two or three different ways. First of all the sweepers of the mohallas come to know generally what happens and they make reports to the sanitary inspectors and so on. We have got some men who make regular visits throughout the mohallas to find out the cases. At the time of the vaccination the vaccinator also comes and tries to pick up the new cases that are not reported. So these are the three means by which we get the births.

Q. Don't you see that with all these three agencies you ought to keep a correct record of births?

A. Still we find a very large number of omissions.

Q. What is the basis for this idea?

A. When we send one agency after another and where they pick up some new cases, we surmise that that there are still some omissions.

Q. Can you suggest any method for improving the system of registration of births?

A. I think if the midwives are compelled to report, of course a large number of births undetected may come.

Q. Do you give the name of the child in the register?

A. Unless the child has actually been named, we simply write male or female and so there comes also the difficulty of identity later on.

Q. Would you advocate a supplementary report being taken from the reporting individual naming the child, to help the identity of the child?

A. There is no harm, but mal-practices may become common because false names might be put forward.

Q. Would you advocate that the name which is given at the time of vaccination should within six months be transferred into the register of births by the Municipal Office? Is it practicable?

A. Yes.

Q. Is there a column provided for the name in the birth register?

A. Yes.

Q. How long are the birth registers preserved?

A. I think they are preserved for about 10 years but I am not certain about this point.

Q. Can you tell us in what communities early marriage is practised here?

A. It is practised chiefly amongst the lower classes.

Q. People tell us that the Bengalis are very great sinners in this respect. What do you say about this?

A. Formerly it used to be so but now-a-days the age of marriage is rising.

Q. What is the usual age of marriage amongst the lower classes?

A. Marriages take place amongst them between the ages of 5 and 6.

Q. When does consummation take place amongst them?

A. I think amongst them also consummation takes place after some period but all that depends upon the financial and other circumstances of the parties.

Q. What is the usual age of marriage amongst the higher classes?

A. There are several cases in which girls are married at 11 or 12.

Q. Is the age rising amongst them?

A. Yes.

Q. What is the usual age of marriage amongst the Muhammadans?

A. They generally marry their girls after puberty.

Q. What is the practice of consummation amongst the Muhammadans?

A. I am not very sure about this point.

Chairman: To what community do you belong?

A. I am a Bengali Kayastha.

Q. Is there child marriage amongst the Bengalis?

A. It is fairly common before puberty.

Q. Does consummation also take place before 13?

A. Yes.

Q. Even in U. P. do the Bengalis consummate the marriages of their daughters below 13?

A. It is not common now-a-days. Now-a-days they vary from 15 to 16 or 17 or even higher.

Pándit Kanhaiya Lal: What age would you recommend for marriage?

A. 16.

Q. Do you think that the orthodox people will accept 16?

A. If they don't accept, I cannot help for it.

Q. What age would you recommend for consummation of marriage?

A. 16.

Oral Evidence of Dr. Sir TEJ BAHADUR SAPRU, Allahabad.

(Allahabad, 16th January 1929.)

Chairman: Please refer to our questions Nos. 20 and 21. In a matter like this, would you have legislation or leave it to propaganda?

A. I will most certainly have legislation.

Q. If you will have legislation, which of the two would you prefer?

A. My opinion is if you fix the minimum age for consent that would be futile and I frankly say that the Legislative Assembly at the present moment is particularly weak in the matter of social legislation. I stand for legislation of a very drastic character in the matter of social reform.

Q. What is the age that you would have for marriage?

A. I would have 18 as the minimum age for girls. I will also prefer going up.

Q. And for boys?

A. My own view is that I shouldn't allow a boy to marry until he is 24.

Q. That would be the ideal. Don't you think that we should begin with a lower age if there is to be legislation?

A. If you want a compromise, have it between 18 and 21.

Q. Can you suggest any method by which a vast number of orthodox people would be permitted to have pre-puberty marriages which they look upon as essential and yet postpone consummation effectually beyond 16 or 18?

A. My method is one of undisguised warfare against the orthodox people.

Q. Can you suggest any other remedy by which the two views could possibly be reconciled?

A. Absolutely irreconcilable. You cannot reconcile commonsense with the shastras or with the orthodox books on religion. That is my honest opinion.

Q. Suppose a law is passed permitting marriages at any age, pre-puberty or otherwise, but enjoining that a girl shall not be sent to her father-in-law's house till she completes her sixteenth year and imposing

a fine for breaking the law, do you think that in that case we can achieve our object?

A. I believe it is possible provided Government have substantial police forces in India and post a police man in every orthodox house.

Q. Do you in fact think that this is not feasible?

A. Absolutely infeasible. But even if a girl is enjoined not to go to her father-in-law's house before the prescribed age, and if the law is broken what is the penalty that you are going to impose?

Q. The penalty would be fine or imprisonment. Will that not do?

A. So far as fine is concerned, well, I believe most of the orthodox people will much sooner pay the fine than forego their orthodox views. So far as the question of punishment is concerned, I am willing to support the Committee provided a very severe penalty of imprisonment for the father, father-in-law, mother, mother-in-law and for the husband is given. Nothing short of that, I would agree to.

Mr. Yakub : What punishment would you suggest?

A. Five years' imprisonment.

Q. Is that the only way by which you can bring a rule into force in this country? Will you not also give whipping to the boy?

A. I have no compunction in regard to this matter and I will be still more severe if the husband happens to be a graduate or an under-graduate of any University.

Q. Do you think that Government or the Legislature would be justified in legislating upon a matter of this kind which is a social or socio-religious question?

A. I think that there is ample justification both for the legislature and for the Government to legislate upon a matter of this kind, but I am not prepared to credit the legislature or the Government with the necessary amount of courage to undertake it.

Q. Do you think that the Government should legislate for instance in the matter of prohibiting drinks?

A. I am an absolute opponent of prohibition.

Q. How do you distinguish between the two cases? One is as bad an evil as the other.

A. I don't think that the evil is of the same character or of the same extent. Amongst the 350 millions of people you will find that the number who drink is comparatively very much smaller than the number of parents who get their girls married at the age of 10 or 11.

Q. What would be your estimate of the number of girls who are married below 15 in the rural areas?

A. I think the number is very large in this province. Amongst the middle classes I am glad to say that the tendency is upward, but still I should think that if you take the figures which I haven't examined, you will find that the number of marriages at the time when the girl is only about 12 or 14 is shocking particularly amongst certain communities in this province.

Q. But taking the whole province of United Provinces do you think that the percentage will be so high as 50 per cent.?

A. I think it is much more.

Q. Are there any classes here who definitely marry their girls later than 16?

A. I can tell you of my own community which is a very small community in this province. It is now very seldom that we come across a girl who is married before 16 or 18. Generally it is about 18 or 20. Twenty years ago it used to be different and I believe amongst the Kshatriyas and certain other communities I have come across girls being married at a very late age.

(Chairman: In this case, for instance am I to understand that your community is about 1,000 people in the United Provinces?)

A. It cannot be more than 1,500 to 2,000. It is practically a negligible number.

Q. I am speaking from a different point of view. Are you in a position to generalise and compare the health of the girls in your community after 16, and the girls of other communities where there are early marriages?

A. My experience of communities in which the early marriage prevails is that the girl never reaches her youth and she suddenly jumps to old age.

Q. But in the case of those people who marry their girls late, do you find that those girls are much better?

A. I think the girls keep much better health, the children are much stronger and there is much greater happiness in the social life and domestic life.

Q. Please refer to our question No. 11. Have any such cases come under your own observation?

A. It is a very delicate matter and I will not mention the name. But I am just coming from the Court and some 15 minutes ago I was dealing with a case where a girl of 16 was married to a man of 25. She died within six months. The medical evidence certainly tends to show that her death was accelerated by married life. It was a disputed fact whether there was a married life or not. This is not a solitary case. I have come across in my professional career scores of cases which are to my mind indefensible on that ground. If I were at liberty to mention the consequences of certain cases during the last 34 years, I can give you a large number of them where girl mothers have suffered on account of married life. I remember one very big case in which I appeared several years ago in which the girl was married at the age of 12 and she died at the age of 19 leaving 3 children and there was a dispute with regard to the property. She died partly of phthisis and partly of insanity and the medical evidence was absolutely reliable in that case because it was given by some most eminent English doctors who attributed death to the excess of married life.

Q. When did she begin her maternity?

A. Before she was 14 years old she began her maternity. I also know another case in which a rich man at the age of 46 married a girl of 14 and that girl died at 17 and she also died of phthisis.

Q. Was she a rich girl?

A. She herself was not a rich girl. She came from a poor family but her husband occupied a very prominent position and was a Rajah.

Q. What about the children of these early mothers?

A. They are generally very weak and feeble.

Q. Don't you think that if we go upto 18 for marriage, there will be a terrible amount of opposition, etc.?

A. I do not believe in that at all. I believe there is as much opposition without it as there will be with it.

Mrs. Nehru: Do you think that it is possible to bring about any reform by terrorism specially when the majority of the people are orthodox?

A. It is not a question of terror to my mind, but it is a question of strength. If the Government is prepared to face some silly questions which arise in the case of our national life, why should not the Government take a bold step in this?

Q. But where a democratic Government is concerned and the majority of people are orthodox is it possible?

A. But you cannot have a truly democratic Government so long as the people are orthodox. That is my conviction.

Q. I suppose you know a great deal about Turkey. Can you tell us how those social laws are administered there?

A. Personally speaking I am a great admirer of Turkey and the Turkish Statesmen. When I travelled there, I saw many schools and colleges where girls are educated. I think the girls' schools there might be favourably compared with some girls' schools that I saw in England and France. The girls are absolutely free. There are a number of girls employed in the Post Offices, in the Banks and in the public offices. They are extremely dignified girls and very well-behaved. All these things were brought about in the case of the Turks, although the majority of them never agreed to all these reforms, because there was one strong man at the helm of affairs who thought that his policy should be carried out, and he never shrunk from the consequences.

Q. What methods did he adopt to bring about those reforms when the majority of the people did not agree with his point of view?

A. I think it was by sheer force.

Q. But there must be some way of doing that.

A. First of all he made short work of the mullahs and the priests of the country.

Mr. Bhargava : But the priests do not instigate marriages?

A. I think 99 per cent. of the marriages are due to the priest class. I should make short work of the priests.

Q. And one of the ways is that he should be penalised?

A. The greatest mischiefmongers in Indian history have been the priests.

Q. Therefore you would seek every occasion to penalise him for the just cause?

A. Yes.

Q. Whether he is guilty or not?

A. If he is guilty.

Chairman : He officiates at marriage, but he does not know what the age of the boy is and what the age of the girl is?

A. He ought to know. The priest generally is a man in these Provinces who is associated with the family in almost everything. He ought to be able to trust to his commonsense and power of observation to find out whether the girl is below 12 or above 12.

Q. Generally the *purohit* of the family has that knowledge but at the time of marriage there is not only the *purohit* but there are other persons who are called for the occasion?

A. They ought to satisfy themselves.

Q. The parties who are celebrating the marriage will give them to understand that the girl is of such and such age.

A. If he is misled he may be acquitted but if he knows what the age of the girl is then he is guilty and I would not spare him on the ground that he is a pious priest.

Mr. Mitra : Do you think that 18 should be the minimum age for marriage for girls?

A. Yes, but if you put it higher so much the better.

Q. But do you not know that there is medical evidence that after a certain age the organs are less flexible?

A. I should feel sorry for such doctors if they have such an opinion.

Q. Would you go up to 40 for girls?

A. I have no objection at all. There are certain countries in the west where a man or a woman is not allowed to marry after a certain age. There are laws with regard to that in Europe.

Chairman : Where is that?

A. All that is given in Burge's Foreign and Colonial Law in the chapter relating to marriages. You will find the whole thing is given with regard to Russia, Switzerland. That is to say a law is enacted that no man above a certain age should marry. I believe it is also there about women but I am not sure about it.

Mr. Mitra : In the law of marriage are you ready to provide for exemptions?

A. No.

Q. You certainly think that there are some orthodox people who sincerely believe that according to the *shastras* they should have pre-puberty marriages.

A. I don't dispute their sincerity or their existence, but I regret it.

Q. Are you not ready to make any special provision for them?

A. No.

Q. Don't you think that those orthodox people who are in a majority will resent this marriage law and will try to resist it?

A. I have no doubt they will resist it and they have resented during these 2,000 years.

Q. Wouldn't their resentment take some serious shape?

A. If it takes a serious shape Government should be prepared to put it down.

Mr. Shah Nawaz : Do you think that women have been so far the victims of these social evils?

A. I think so.

Q. Do you think that fixing the minimum marriageable age will be one of the first steps towards their emancipation?

A. It will be one of the steps but I won't say it will be a very big step.

Q. We are told by some Brahmin witnesses at any rate that women generally have a desire to be married early and also have a desire to be consummated. Do you agree?

A. I believe to a certain extent it is true.

Q. What is the opinion of the women from countryside, so far as the orthodox women are concerned?

A. There is not much to choose between them and the orthodox men.

Q. Don't you think that some orthodox Brahmins in their heart of hearts feel that this is a tremendous evil, viz., early marriage and early consummation?

A. Well, if they feel like that, then I can say they are not orthodox. They are insincere.

Q. Do you think that all the orthodox men are insincere?

A. If you ask my candid opinion I believe at least 60 per cent. of the so-called orthodox men are insincere.

Q. Have you reason to believe that some of the girls are consummated before they arrive at the age of puberty?

A. I believe that it is so but I couldn't give you the figures and I cannot substantiate that.

Q. Do you want a law fixing the minimum age for marriage at 18?

A. Yes.

Q. But don't you think that a considerable number of girls may go wrong from amongst the lower classes if they are not married before 18?

A. That presupposes that a considerable number of girls even after marriage will go wrong. You take the cases of kidnapping. You will find that in good many cases of kidnapping the girl who is kidnapped is a married girl and if we take the other case involving moral life, you will

find that the majority of the girls that are involved are married girls and not unmarried girls.

Q. Do you think that there will be no difference?

A. I don't think so.

Q. Who should be the prosecutor in case there is a breach of the marriage law?

A. The State.

Q. Do you think that these cases should be tried by ordinary courts or do you recommend matrimonial courts for this purpose?

A. I would recommend an ordinary Magistrate.

Mr. Bhargava : What was the age of marriage 20 years ago among the Kashmiris?

A. Twenty years ago girls used to be married between 12 to 14. Now you seldom come across cases of girls who are married at the age of 16.

Q. How have they come to raise this age?

A. Because of their revolt against orthodoxy. There was no law so far as the Kashmiris are concerned. They took to western education much more kindly than other people did.

Q. Is it not a fact that people do not know the evil effects of early marriage, therefore they have recourse to early marriage?

A. They have known it for generations, but they have not the courage to act upon it.

Q. Am I to understand that a villager knows the evil effects of early marriage?

A. An ordinary graduate understands it and my grudge is against the ordinary graduate.

Q. If a villager does not know that early marriage is an evil should he be sent to jail for 5 or 10 years?

A. That is the only way to educate him.

Q. Instead of having recourse to compulsory education and other things you want to educate the people by legislation?

A. Legislation is one of the means of social reform and it has been adopted in many countries.

Q. But the question is that there are other factors. For instance if Government does not educate the people it has no right to inflict legislation of such a drastic nature on the people. Government is responsible for gross dereliction of duty in not educating the people?

A. I am strongly of the opinion that persuasive measures would not do. There must be some strong penal measure that should be adopted.

Q. Before enacting this law Government should undertake propaganda and make every person to understand that it is evil to marry early. That propaganda can best be carried on by school text books and in colleges.

A. I have been hearing that for the last 45 years but nothing has been done. No Government can undertake propaganda of this character.

Q. So you are of opinion that Government need not undertake propaganda, but should enact a law?

A. The only effective propaganda in the matter of social reform independently of a penal measure is to have primary education, secondary education and higher education extended over a larger area and larger sums of money should be spent, but there are no other means of bringing about reforms. You must have both law and propaganda.

Q. What are your reasons for fixing the age of marriage at 18?

A. Because I believe that in this country physically girls do not arrive at maturity before the age of 18. I should give them time to acquire more knowledge and experience.

Q. I don't think you can visualise the period when every girl will be able to read in college?

A. I do emphatically when every girl ordinarily will be decently educated.

Q. But she cannot only be educated in colleges?

A. I do not attach much importance to college education. You ought to give her reasonable time for education and I think 18 is by no means excessive.

Q. So far as physical development is concerned doctors are unanimous that at 16 there will be no physical injury to the girl or her progeny. Would you be satisfied if 16 is fixed as a first step?

A. I beg to differ from these medical men. They may be sound medically, but socially they are absolutely wrong.

Q. So that your objections are not medical but social also?

A. Yes.

Q. You want that every girl should be able to select her own husband?

A. I shall be glad if things come to that.

Q. In your experience is it true that girls before the age of 18 say at 15 or 16, are seduced?

A. For the matter of that you come across cases of even grown up women of 25 or 30 being seduced.

Q. Generally speaking girls between 15 and 20 are seduced?

A. Specially in villages.

Q. And so far as the evil of prostitution is concerned is it not true that prostitutes begin their profession at the age of 14 or 15?

A. I do not believe that because in their case the earlier they begin the greater are the chances of their success in their own profession, their example can be followed.

Q. So that generally speaking at 15 or 16 a girl begins to feel the sexual urge?

A. I should not draw any inspiration so far as the life of prostitutes in this country is concerned. It may be true in the case of prostitutes who want to earn their living. It is quite different in the case of decent higher and middle class families.

Q. But you want to provide for the whole of India. Many people are of the opinion that if you fix the age of 18 there is a greater danger of immorality among unmarried girls?

A. If you want to yield to that temptation you can say that every person when he feels the sexual urge must yield to it. I think decency and social considerations require that you must postpone the fulfilment of your sexual desire to as late a time as possible.

Q. But you do not want to make that ideal determining the practicable age for the marriage of girls. If there is any scandal about unmarried girls the social obliquy is much greater.

A. What about the scandal of married women, do not they take place? I can give you scores of examples from every rank of society.

Q. We are not legislating for that?

A. You ought to.

Q. There is already legislation there—Sections 497 and 498. If social obliquy is much greater in the case of unmarried girls and if you fix 18 as the age for marriage will many girls not be ruined?

A. I most emphatically differ from that view that unmarried girls at the age of 15 or 16 are more likely to be corrupt because you do not allow them to live a sexual life. I do not think that is the case in the Hindu Society. Otherwise so far as the Hindu Society is concerned it is a doomed society. If unmarried girls go wrong at the age of 15 or 16 there is no

use of talking of legislation. I hope you are going to recommend a better provision for their minds than husbands.

Q. If there is provision for occupation of their minds and if the Government provides compulsory education then you would recommend marriage age at 18 and not before that?

A. Compulsory education or no compulsory education the nation should not be allowed to further deteriorate.

Q. The law givers recommend 16?

A. My answer is make a bonfire of these law givers. These law givers are at the root of our downfall. I have no respect for any such law giver.

Q. May I know that you want as little interference with the social and religious customs of the people as possible?

A. I want as much interference in their religious views as possible provided you have got a national government or even foreign government which is national in its outlook.

Q. Consistently with efficiency if you can bring about a state of things which you would yourself like without interfering with their customs would you not prefer that state of things?

A. Would you give me any illustration.

Q. Generally it is said that if marriages are penalised up to the age of 16 there will be great opposition?

A. It would not lead to disaster.

Q. Would you be satisfied up to 16?

A. So far as I am concerned I would take it in the nature of a very weak compromise on the part of the legislature. If I happen to be a member of the legislature my vote will be against it.

Q. You will not accept anything short of 18?

A. No.

Q. What would you prefer between no legislation and legislation at 16?

A. Personally I do not expect getting 15 or 16 from the legislature. All this is academic discussion.

Q. You do not expect anything from the legislature and in propaganda you do not believe, then how will the thing be done?

A. You make your own recommendation and leave it to the legislature to support them or to go against your recommendations, but I should accept no compromise on these matters.

Q. Do you think there will be great discontent in the country if the Government does not make any legislation fixing the age of marriage?

A. So far as the bulk of the educated people are concerned I think there is not much to choose between them and the orthodox people.

Q. No educated people will feel that the Government is not doing its duty?

A. There will be a good many who will feel, but so far as the bulk of the educated people are concerned they are prepared to rebel against other things but not against their social system. That is my idea of my educated compatriots.

Q. You complain that educated people do not do any work or propaganda with regard to this evil?

A. They fight shy of their intellectual convictions.

Q. What is the punishment that you would propose to give to those who break this marriage law if enacted fixing the age of marriage at 18?

A. Five years to bridegrooms, parents and parents-in-law.

Q. It will be a sessions case?

A. Serious cases are never tried summarily, they always go to the Sessions Court.

Q. Suppose this rigour of the law is made in every case, do you not think that many girls will not be worse than widows if you send the husbands to jail for five years?

A. What happens now. I think it is better for girls to live as widows for 5 years than to live the whole life as they do.

Q. If you send their parents and the father and mother of the boys for 5 years, the girls will have no protector?

A. I think there will be other members of the society to look after them.

Q. Are you quite serious in supporting 5 years?

A. I am absolutely serious about all I have said.

Q. But the punishment seems to be quite disproportionate?

A. When I say 5 years I mean the maximum. I leave it to the discretion of the Magistrate.

Q. What punishment do you propose to give in the case of a breach of consent law?

A. I do not believe in that law, I do not agree to any age of consent; that seems to be a futile thing.

Mr. Yakub: How long have you been associated with the legislature of this country?

A. I entered the United Provinces Legislative Council in 1913 and I was associated with the legislature—provincial or central—in one capacity or another from 1913 to 1922.

Q. You were also Law Member of the Viceroy's Executive Council?

A. Yes.

Q. During all this time did you initiate or propose any law or measure to remedy this evil of early marriage?

A. No.

Q. If you were serious about the evils of this system may I know what was the reason for your not introducing or producing any such measure?

A. In the old councils it was no use. There was no such thing as a non-official elected majority.

Q. In 1921-22 when you were Law Member of the Government of India there was a non-official majority.

A. But you must remember that the Law Member has no power of initiation.

Q. Did you recommend to anybody or make any suggestion?

A. I was a very strong supporter of every social legislation. I think people came up in my time with a Bill.

Q. Had you any hand in that Bill?

A. No, it was a non-official Bill. I was a part of the machinery of Government which is terribly shy of introducing any social legislation.

Q. When you were a non-official member even then you did not bring in any measure?

A. No.

Q. What was the reason?

A. Because I believed I would not get any support from the Legislative Council. I think the present Assembly is much worse than the Assembly in my time. There are more orthodox people now who are too apt to raise a cry of religion in danger than they were in my time.

Q. Don't you think that if there are more orthodox people instead of having nothing we may have something by making a compromise?

A. You are quite welcome to have a compromise but I would not support it. I would look upon it as some advance.

Mr. Kanhaiya Lal: If the legislature fails to pass marriage legislation would you recommend the raising of the age of consent?

A. I am not very enthusiastic about it because I do not think it can be easily worked.

Q. As a next best alternative what age would you recommend for the age of consent if the legislature fails to have a marriage law?

A. Eighteen.

Q. Can you suggest any measure for bringing cases of breaches of the law to light. Suppose we have a law fixing the age of consent at 18 and marriage is celebrated at 13 or 14 how shall we bring cases of breaches of the law to light?

A. I find it extremely difficult to suggest anything. So far as fixing the age of marriage is concerned I think it can be easily worked if you have a system of registration. If anyone comes and makes a complaint you can put the law into motion.

Q. Would you not make the cases cognizable on the condition that the enquiry should be made by a gazetted officer of the police.

A. I do not know what machinery you are going to provide; I cannot think of a suitable machinery.

Q. Would you suggest the formation of vigilant societies to educate the people and to watch and look after these cases?

A. I doubt very much whether it will be effective.

Q. Do you think that if we have a system of village panchayats regularly working, they will be helpful in the matter?

A. I doubt it.

Q. Would you recommend a system of registration of marriages giving the names of the marrying parties and their ages?

A. I would recommend that.

Q. Who should be the authority on whom the obligation of maintaining the register may be laid. We have got Municipal Boards and District Boards on one side and executive authority on the other side?

A. I have not thought over it but I should certainly provide some sort of agency whose business it should be to record these things.

Q. In those cases would you place the obligation of reporting the marriage on the parents or guardians of the marrying parties and also on the priest?

A. On both.

Q. As regards the trial of marital cases you have said that ordinary courts will do. Would it not expedite disposal and save girls from public exposure if there is a matrimonial court consisting of one Magistrate and 2 non-officials to deal with such cases?

A. I believe in publicity.

Q. Publicity is one thing and saving a girl from public humiliation or scandal in courts is another.

A. I would not provide any special tribunals either for marital cases or for non-marital cases.

Q. Don't you think that such courts will inspire greater public confidence?

A. After all in your matrimonial courts there will be men of the same class or inferior class.

Q. Do you think we can have 2 suitable non-officials available in each District to try these cases. They may be honorary workers?

A. I do not believe in honorary agencies in cases of this nature.

Oral Evidence of Munshi ISHWAR SARAN, M.L.A., Advocate, High Court, Allahabad.

(Allahabad, 17th January 1929.)

Chairman : I understand that you are the President of the Kayastha Patshala for the last few years?

A. Yes.

Q. Were you President of the United Provinces Social Conference held at Gorakhpur?

A. Yes.

Q. Are you a member of the Court of the Hindu University? Were you also a member of the Court of the Allahabad University?

A. Yes.

Q. You are a member of the Legislative Assembly?

A. Yes. I was a member of the first Assembly and I am a member now.

Q. Do you think from your experience that in this part of the country consummation of marriage takes place at 13 or before a girl is 14 complete?

A. Yes, I should think so.

Q. In what classes do you think that is the case?

A. More particularly I think it is in the lower classes.

Q. And not among the Brahmans?

A. I should imagine that it is not to the same extent among the Brahmans as it is among the lower classes.

Q. Among the lower classes is it soon after puberty or is it pre-puberty?

A. I should not venture to give an answer.

Q. Do most of the Brahman girls attain puberty before they are 13 complete or 14 complete?

A. I cannot speak definitely but I should imagine it is between 13 and 14.

Q. When does consummation take place among the Kayasthas?

A. After 14 as a rule.

Q. Has that been long or is it of recent growth?

A. The age is increasing.

Q. Is that a growth of the last 10 years?

A. Yes.

Q. Have you any reason to believe that the statutory age of 13 within marital relations is broken in a large number of cases?

A. It is broken but I cannot say whether it is in a large number of cases or not.

Q. You do not think that the age of consent law has been very effective?

A. No.

Q. From your experience are you in a position to say that early consummation before 13 or 14 leads to deterioration of the mothers and of the children?

A. Most decidedly.

Q. To mend matters in this respect would you have social propaganda or would you take the aid of legislation?

A. I am afraid we will have to take the aid of legislation.

Q. Ordinarily you might have relied on social propaganda but perhaps you think it is too slow?

A. It is far too slow and not compelling.

Q. Would you have the law of consent raised or would you have the age of marriage fixed?

A. I would have both.

Q. What minimum would you fix as the age of marriage and the age of consent?

A. I would make no distinction. I would have it at 18 but as a concession I might be inclined to reduce it to 16 but in no case would I go lower than 16.

Q. Do you think there is a large class of people here in the United Provinces who believe in pre-puberty marriages as essential?

A. Yes.

Q. What per cent. would you put it at?

A. If you exclude the towns it will be a very large percentage.

Q. In the towns that party is not so preponderating?

A. No.

Q. Would it be 80 per cent.?

A. It will be larger than 50 per cent. in any case.

Q. Do you think that this age of 16 that you recommend for both would be acceptable to a large body of people?

A. We cannot conceal the fact that it will not be acceptable.

Q. Are you willing that the Government should face it?

A. Government must face it; in fact it ought to have faced it much earlier.

Q. Can you suggest any method by which we could leave the orthodox people to have marriages at any time they like but effectually put off consummation till after 16?

A. It will be practically impossible.

Q. Suppose a law were enacted that no girl was to be sent to her father-in-law's house, although she may be married till she is complete 16. Do you think it is possible to have such an arrangement?

A. I am not in favour of it for this reason that the sending of the girl is very essential just after marriage. If the change that you have suggested were to be accepted, again you would come into conflict with popular opinion; but if you come into conflict with popular opinion in this case, why not come into conflict with popular opinion and have a very effective remedy and that is not to allow them to marry at all before that age.

Q. Hindu girls go, as you say, to the husband's house for a very short time after marriage.

A. That is very common here.

Q. But in certain communities you have *gaona* in the sense of consummation of marriage; but the girl goes to the husband's house and all the same she is expected to come back.

A. It is not so in every Hindu community. Take for instance the community to which I belong. I know it is not necessary for a girl to go to the husband's house after the marriage.

Q. Is there no *griha-pravesh* ceremony in the father-in-law's house?

A. No.

Q. Are there many communities where this ceremony is observed?

A. Yes, it all depends on the auspicious date being fixed.

Q. Is not *gaona* very common?

A. It is very common.

Q. How long after marriage does it take place?

A. It depends on various circumstances.

Q. Is it not that till the girl attains puberty she is not generally sent to the husband's house?

A. Not necessarily.

Q. In case there is a marriage law and there is a consent law and if there is breach of the marriage law and consent law what punishment would you suggest?

A. For breach of marriage law for the next 12 years I should have lighter punishment such as fine but after 12 years I should certainly have imprisonment.

Q. Should fine be a matter of judicial discretion or do you want that as the only punishment?

A. It should be the only punishment and I will frankly say what is at the back of my mind. I want the change to be as little violent as possible.

Q. What punishment do you want till 16 in the matter of age of consent; would you have the same till 16 as it is at present up to 12?

A. In marital cases I would have a lighter punishment say fine only for the next 10 years.

Q. That is between 12 and 16 you would have lighter punishment?

A. Yes, it may be heavy fine.

Q. What age would you recommend in extra-marital cases?

A. Eighteen.

Q. Why do you make a difference in extra-marital and intra-marital cases?

A. I will have it at 18 for both but as a concession I would make it 16 for marital cases.

Q. Do you know of any communities where marriages take place always beyond 16? Do you know of Ahirs?

A. There is early marriage among the Ahirs but they have late consummations. They do not send the girl till she is developed.

Mrs. Beadon: Have you met any cases in which injury has resulted to mothers or children as a result of early consummation or early maternity?

A. I am afraid I cannot remember any at the moment.

Q. But have you seen such cases?

A. Yes. The physical condition of the boys and girls that you find is, if not wholly at any rate very largely, due to this early marriage. Beyond that I cannot answer the question that you have put to me by citing any specific instances.

Mr. Shah Nawaz: Will there be any agitation if we were to legislate about the law of marriage?

A. Yes.

Q. Do you think this measure of legislation would be welcomed by the women generally?

A. It will be welcomed by such women as are able to form an intelligent opinion on the question.

Q. What about the countryside women?

A. In the present condition of ignorance I think they would not.

Q. Will there be very many men and women who think it against the *sastras*?

A. I think so.

Q. But a great many women will receive this legislation with a sense of relief?

A. I should not imagine that a great many women harring those who are educated will look upon it as a relief.

Q. Don't you think that if we were to fix a minimum age for marriage at 16 it will be rather a sudden and dangerous jump?

A. I do not know about its being dangerous but it is a sudden jump.

Q. Dangerous in the sense that it will lead to agitation?

A. I would not attach the slightest importance to this agitation.

Q. Who should be the prosecutor in your opinion? Should everybody make a report if there is a breach of the law of marriage?

A. Certainly.

Q. Should the State be the prosecutor or the private person?

A. The latter.

Q. And the expenses should be borne by the Government?

A. Of course.

Q. In the case of breach of marriage law who should be punished?

A. I should say the guardian of the bridegroom in case the bridegroom is a minor, the guardian of the bride and the priest whoever he may be.

Q. If you want to have a deterrent effect you must have some sort of imprisonment. After 10 years I suppose the whole thing will subside.

A. If you give a wide discretion to the courts in the case of poor men a fine of Rs. 20 would be a good deterrent.

Q. Would you prescribe imprisonment and fine and leave it to the discretion of the court?

A. I would prescribe fine and would leave the amount to the discretion of the court. In my opinion it must vary according to the paying capacity of the person fined.

Q. Are we to understand that in no circumstance you would inflict imprisonment?

A. Not within 10 years.

Q. What is your reason for fixing 10 years?

A. My reason is that by that time public opinion will have been educated and people will be reconciled to it. The law would be widely known and therefore you would be in a better position to impose a severer sentence than you would be at the present moment.

Q. Do you think that women are the victims of social evil of early marriage or early consummation?

A. Yes.

Q. Do you think that sastras and smritis are getting out of date?

A. They are getting out of date as far as the educated people are concerned but at the same time I am free to confess that they do not exercise the same authority as they used to exercise some years ago. Their authority in my opinion, I speak with great diffidence, is on the decrease.

Q. And it will continue to decrease?

A. I hope so.

Q. So that after 10 years nobody will follow the sastras so far as they relate to the question of marriage?

A. There will not be the same amount of opposition and the same amount of heart-burning or dissatisfaction as you will have now.

Mr. Bhargava : At present the husband is guardian of the girl after marriage and he can demand her custody from the parents. Except the Madras High Court where it has been decided that she cannot be sent before puberty, all other High Courts are of the view that a husband has got a better right. Do you want that there may be change in the law of guardianship?

A. It will follow.

Q. Supposing a law relating to the prohibition of marriage below a certain age is not passed and you have to fall back upon the consent law, would you like that some provision may be made in the Criminal Procedure Code on the analogy of the provision contained in Section 107, Criminal

Procedure Code, that if a husband and wife come together then the Magistrate, if he is satisfied that the commission of the offence is likely to take place, may order that the husband and wife may be separated by some arrangement by the parents of the boy. In case they cannot make it he may keep the prospective offender in confinement for as long a period as they cannot keep him separate.

A. I cannot easily contemplate any Magistrate not coming to the conclusion on the material that you would place before him that there is a likelihood of consummation taking place between a husband and wife when they are brought together. Then in each and every case this will be the result that is likely to follow unless one is prepared to legislate that in every case no husband and wife should be allowed to live together but then that law will be nugatory because according to me it will be very difficult.

Q. I understand that you are in favour of some legislation which may prohibit the coming together of the husband and wife before the prescribed age?

A. As you are not in a position to detect the offence, the only possible course to prevent consummation is to keep the husband and wife separate or punish them or in other words let them not marry at all.

Q. If there is no marriage law there are two things—either punish them after the offence has been committed or prevent them?

A. If you tell them that you may go through the form of marriage but you will not be allowed to live together, I would not mind it.

Q. How would you effect it?

A. You should not allow the girl to go to the husband's house or the husband to visit her.

Q. So you would penalise the coming together and make it an offence. Is it not?

A. Separate them and take bonds from the parents and if one party is major take the bonds from him.

Q. As regards the right of complaint are you in favour that every breach of marriage law or consent law may be made a Crown case instead of its being a private case?

A. It should be a Crown case.

Q. Would you prefer that all reports should be made to the District Magistrate or to some prescribed authority and after going through these cases the Crown may take them up?

A. Yes.

Q. Do you think that the breaches of the law of consent may be made compoundable?

A. No.

Q. In your opinion ordinarily should the police have the power of investigation?

A. If some machinery could be devised, as it might well be devised, I should not like the police to do anything with it but in case it is found impossible to devise any other machinery I would allow high police officers above a certain rank to investigate.

Q. I understand that you are in favour of not allowing the police to interfere in such cases but in case where the girl is below 12 and it is likely that intercourse with a man may cause some injury to the girl, don't you think there is some likelihood of the disappearance of the evidence if the police does not come on the scene at once and take charge of the case.

A. Without expressing any opinion on the possibility of the evidence being destroyed, if we must have the police I am strongly of opinion that the police officer above a certain rank should be in charge of this investigation.

Q. In order to enforce this marriage law or the law relating to the breach of age of consent, would you like that there should be marriage registration?

A. Yes.

Q. On whom would you place the obligation of reporting the marriages?

A. On the parents of the parties or in case the husband is major on him.

Q. What punishment would you provide for failure to report?

A. Fine.

Q. In cases in which the persons may be breaking the rules regarding marriage deliberately, do you think that people will make reports?

A. They will be fined if they do not.

Q. Would you further like that to obviate such failures to make reports some other agency should also be provided who will be responsible for reporting for instance lumbaridars, patwaris in the villages because offenders are not likely to report themselves?

A. I do not object to that.

Mr. Kanhaiya Lal : Suppose the legislature fails to pass the marriage legislation, what age would you recommend for consummation?

A. I would personally like 18 but I would make a concession and let it go down to 16.

Q. In case the legislature fixes 14 for marriage would you recommend 14 for consummation or 16?

A. 16.

Q. You have said it is very difficult to get information about breaches of the consent law. Would you like to have vigilance societies formed in towns and rural areas consisting of representatives of different classes of people, one for each pargana?

A. Will they be Government officials or honorary?

Q. The suggestion is that they may be either nominated by the executive authority or nominated by District boards, municipal boards and social reform organisations?

A. I should welcome the proposal but I am afraid it will not be effective.

Q. Would you like village panchayats to do this matter and give them both the power to do propaganda work and also to do educative work?

A. In the first place you will kindly notice as far as I am aware, there are not very many village panchayats of any standing in these Provinces and in the second place there are none in the towns. These village panchayats may be useful in the villages but it is rather difficult to expect these village panchayats to be effective in large towns like Allahabad, Agra, Benares or Cawnpore.

Q. Would you recommend the formation of village panchayats in rural areas where they do not exist to do educative and detective work and to try cases of breaches of the marriage law?

A. If you get it, I would not mind it, but I do not think you will get it.

Q. But in this country we have had village panchayats.

A. It will take time to form them and it will be difficult to get the right type of men.

Q. As regards urban areas it has been suggested that we might form sub-committees of municipal boards, or district boards to look after these cases and do propaganda work. Do you think they will be helpful?

A. Yes. I should welcome help from any quarter, if we get it; but as far as propaganda is concerned whether they will carry on effective propaganda is a different matter altogether.

Q. You have said you would not have police interference in these matters. The law at present is that cases under 12 are cognizable and above 12 non-cognizable. Would you alter the law or keep it as it is?

A. Keep it as it is.

Q. Would you exempt the boy from punishment up to a certain age, and punish the parents or guardians who are responsible for bringing the boy and the girl together?

A. I would punish the parents severely but not allow the boy to go scot free but the punishment in the case of a boy of a tender age would be much lighter.

Q. The amount of punishment is a matter within the discretion of the magistrate. Would you exempt the boy from punishment altogether?

A. No, in no case.

Mr. Shah Nawaz: By severely punishing do you mean a heavy fine?

A. That was in the case of the marriage law and not in the case of consummation law.

Mr. Bhargava: In marriage, as an alternative even, you don't advocate imprisonment?

A. I should not have it for the time being.

Mr. Kanhaiya Lal: You have said in the case of a breach of the consent law you would not exempt the boy and make the parents liable?

A. Much more liable.

Q. Would you make the mothers also liable?

A. Unless and until you find that there is no male guardian and the woman is the sole guardian I would not make her responsible.

Mr. Muhammad Yakub: Don't you know that in case of marriage it is women who are anxious to have early marriage and early consummation and their voice prevails and they are greater sinners than men?

A. I know that. If you ask me to make a brand new law I would make it that way. We have to see all the popular sentiment that exists.

Q. Would this fine mean an additional expenditure in the marriage?

A. You will have to take into account the vast majority of cases.

Mr. Kanhaiya Lal: Would you make marital cases cognizable if a safeguard is provided that all these marital cases should be enquired into only by higher officers of the police like the Deputy Superintendent or the Circle Inspector?

A. I would not have it below the Deputy Superintendent of Police in any case. I would not go down to the Circle Inspector.

Q. As a further safeguard would you recommend that every magistrate should be required to make a preliminary enquiry in each marital case before issuing a warrant summons or notice in order to eliminate false and vexatious cases?

A. Yes.

Q. Under the present law cases under 12 go to the Sessions and cases over 12 go to the magistrate. Instead of having these two forums would you recommend the formation of a matrimonial court consisting of a magistrate and two non-officials to try these cases as co-judges?

A. I should personally eliminate the magistrate. If you could get competent non-officials to serve on these tribunals I would much like it.

Q. Do you think non-officials of the right calibre will be available in every district? The addition of magistrate will be helpful unless proper men are available.

A. This suggestion will not get over the difficulty of getting suitable men. If you can get two non-officials you will get three also.

Mr. Md. Yakub: Would you like men of the type of honorary magistrates?

A. No.

Mr. Kanhaiya Lal: Do you think men of superior standing and calibre can be obtained?

A. I should think so.

Q. Honorary?

A. Yes.

Q. Do you think these courts will inspire greater public confidence?

A. Yes.

Q. And also save the girl from unnecessary humiliation?

A. It is much better than the court where all sorts of cases are tried. It is just like sending the patient to the nursing home rather than the hospital.

Q. Would you also like to have a system of registration of marriages, i.e., a record of all marriages being kept with the names and ages of the marrying parties?

A. Yes. It will be useful from other points of view also.

Q. On whom would you place the obligation to report, on the parents or on the priest also?

A. Not the priest. The village headman, the chowkidar or the patwari you might have.

Q. But the priest is also a party?

A. You might have the priest also.

Q. But the omission to report would be penal?

A. Yes.

Q. Why do you want so many agencies, the parents of both parties, the headman and the chowkidar and the priest?

A. I will tell you why. As far as the headman or the patwari is concerned there will become confidence as he will be under the control of the Government, and the parents will consider it a responsibility and that indirectly will tend to raise the marriageable age. That will be a propaganda in itself.

Q. But the priest or the Mulla would not know their ages.

A. It should be their business to know their ages before they join the two parties in a wedlock, and if they do not they should suffer.

Q. Who should maintain this register, the municipal boards and the district boards?

A. Yes, that will serve the purpose.

Q. Or would you like to have a separate department to be paid from fees taken from the reporting individuals?

A. What is your objection to municipal boards and district boards?

Q. The objection is that the register of births and deaths is not accurately kept and there are numerous omissions, but if this register of marriages is not accurately kept our object will be defeated.

A. If that is so I am distinctly in favour of a separate machinery being created which may be supported if necessary by the imposition of a small fee.

Mr. Md. Yakub: But will it not be hard on poor villagers if they have to come to report the marriage from a distance of 20 miles, say. They will have to pay a good deal more than the fee itself as the conveyance charges?

A. I did not go into the details. In that case you may require the priest to go and inform the nearest village authority including the patwari or the Mukhia, and it will be his business to send the paper on in the ordinary course with his other papers.

Q. Don't you think that the Mukhia and the Patwari will harass the villagers and won't take any report until some money is paid to them?

A. I can only say that I live in the hope that this machinery will improve considerably as time goes on.

Mr. Kanhaiya Lal: Would you recommend that in all these cases a free marriage certificate may be granted to the reporting individual?

A. Yes.

Q. Would you recommend the grant of a free birth certificate also lest these registers may after sometime be destroyed?

Q. At present a great difficulty arises as to the identity of the child whose age is in question. The name is not given immediately after birth. Can you suggest any means of meeting this difficulty?

A. I can't answer that off-hand.

Q. Three suggestions have been made. One is that we might require the parents to submit a supplementary report after the name has been given within 3 or 4 months. The second suggestion is that whenever the report is made the reporting individual should be required to state whether the child is the first child or the second child or the third child, i.e., the birth order should be given. The third suggestion is that when vaccination takes place the name is usually given in the register and that can be transferred from there to the birth register. Which one would you recommend?

A. I would recommend that a supplementary report be asked for.

Mr. Muhammad Yakub: Would you fix the age of marriage at 18 for girls?

A. I would prefer 18 but as a compromise I would go down to 16 and not below that.

Mr. Mitra: Are you ready to provide for any exemptions in your marriage law in any hard cases? The old father may be dying without any relations to look after the girl. The daughter may be some 6 months below the prescribed age. Would you permit him to apply to the district judge to have a special license to get the girl married?

A. I would.

Q. Are you also ready to include the cases of men like orthodox Brahmins who sincerely believe that it is against his Shastras not to get the daughter married before puberty?

A. No. There are people who do sincerely believe that they have to marry their girls before a particular age. It is just that which you have to combat and overcome.

Q. They say that though marriage is celebrated earlier consummation is delayed till puberty?

A. The question raised is very interesting. It is a question of psychology and morals. Be that as it may, I may perhaps be inclined to be in favour of marriage at an earlier age provided there is not the danger of consummation. When once the marriage has taken place it is rather difficult to avoid consummation. You will not have the same safeguards. I therefore say that let both the age of marriage and the Age of Consent be fixed at 16. I am prepared to make exceptions in very hard and exceptional cases but in no other case. Otherwise nothing will be easier than for a man to go to the court and say, "I am a man who sincerely believe in marriage taking place at a particular age and please grant me the concession". The court will be bound in that case to accept his statement and grant him the exemption and that is exactly what I wish to provide against. I can go to the judge and say according to my religious belief the marriage should take place at 10. What other questions will be put to me. If he enters into a discussion, I will simply say I do not discuss religious questions. My belief may be sound or unsound, but here it is and my salvation depends upon the observance of this particular rule. This way you make the whole thing ineffective.

Q. In your marriage law you provide for fine only. For the richer people it will not mean anything. It will be an additional item of expenditure. But for the religious people are you not prepared to provide an exemption?

A. In certain cases it may not be very effective. But the fine will vary according to the paying capacity of the man who is being fined. Let me make it clear, however, that in the majority of cases this fine will be really deterrent. Take the case of an ordinary man in the village, if he is fined

there is no doubt that it will be deterrent enough and you know most of our people are poor.

Q. Even for a certain period you are not ready to make certain concessions.

A. Orthodoxy will take centuries to be reasonable.

Mr. Md. Yakub: Suppose there is a lady whether a Hindu or Mohamadan and she goes to the judge and says, I am an old lady and there is nobody to look after my daughter after me and she is now 15, i.e., six months less than the prescribed age and I wish that she be married in my life-time. Would you give exemption in that case?

A. I have already said that in such cases, I would. But if the same lady goes and says that it is my religious belief that the girl should be married at 15, I won't grant the exemption.

Mr. Bhargava: In the other case also you will exempt only if the parties give a bond that consummation shall not take place?

A. Yes.

Oral Evidence of Mr. NARAIN PERSHAD ASTHANA, Advocate, High Court, Allahabad.

(Allahabad, 17th January 1929.)

Chairman: Have you been connected with the municipality here?

A. I was connected with the municipality at Agra when I was practising there. I was at Agra for about 14 years. From 1915 I have been here.

Q. Are you connected with any social reform movement here?

A. I have been connected with the Kyastha social reform movement.

Q. Are you connected with any Hindu Sabha?

A. I have not been connected with any Hindu Sabha, but I have been taking part in the social conferences held along with the provincial conference or along with the National Congress. I presided over the Provincial political Conference at Lucknow.

Q. Do you consider early maternity, before a girl finishes her 15th year, an evil?

A. I do.

Q. How is it an evil?

A. On account of early maternity, in my opinion, progeny is very weak, and I think the mother also suffers and becomes very weak.

Q. Is that also your experience from what you have seen of girl-mothers and their children?

A. I think so. I have seen in some cases that on account of early motherhood the labour is very difficult and sometimes death results.

Q. Are you in favour of any legislation on this subject?

A. I am in favour of legislation both as regards the Age of Consent and the age of marriage.

Q. If there is a law of Age of Consent only and no law of marriage will you be satisfied?

A. I will be.

Q. What age would you suggest for consent?

A. 16.

Q. And for outside marriage?

A. I will fix both at the same figure.

Q. Which would you prefer between the two, the law of marriage or the law of consent?

A. I think the two things are quite separate. The law of marriage will only apply where a man is going to be married, i.e., for marital connections only. But in India there is recognised prostitution and for that a law of consent is required independently of marriage.

Q. What age would you fix for marriage?

A. 16.

Q. And for boys?

A. 18.

Q. Do you think in the Kayastha community there is consummation of marriage before puberty or at any rate before a girl completes her 13th year?

A. I don't think so.

Q. Have you met any case of pre-puberty connection?

A. I have not come across any.

Q. Have you come across any case of connection where the girl has attained puberty but has not completed 13 years?

A. I have not come across any in the Kayastha community.

Q. Is that one of the communities then where marriages takes place late?

A. Yes.

Q. In communities that marry their girls early, i.e., before 12, or about that age have you reason to believe that consummation of marriage takes place before a girl is 13?

A. I have no personal knowledge, but I think in the lower classes such as the Kahars, Baries, the servant class, early marriages take place. I have not come across any case which I can cite where consummation has taken place before 13. But I have reason to believe that there may be cases.

Q. Is *Gaona* not a common feature in United Provinces?

A. That is only in higher castes.

Q. What are the higher castes?

A. The three twice-born classes. I don't think in the lower classes there is any such thing as the *Gaona* ceremony.

Q. Do you know anything about the Ahirs?

A. I do not know anything particularly.

Q. Have you got any untouchable class here?

A. Only the sweepers. They are untouchable in the sense that we cannot have food or drink with them.

Q. I mean pollution by mere touch?

A. Only the sweeper class is like that.

Q. Not the Dhobies?

A. No.

Q. Not the potters?

A. No.

Q. Chamars?

A. No. We can touch chamars.

Q. What is the custom among chamars about marriages?

A. I think they marry early.

Q. Is there any custom of *Gaona* among them?

A. I don't think there is any.

Q. You have been practising at the bar at Agra and here. Have you known of any case in which the husband has been indicted under this section?

A. I have not. I have no criminal practice.

Q. Do you think that the tendency of the marriage age is to rise?

A. I think on account of the social reform movement there is a tendency.

Q. Is it on account of social reform movement or on account of economic causes, not being able to pay heavy dowries or not being able to get suitable husbands?

A. I think it is on account of education and social reform.

Q. Do you know of any one single friend or acquaintance of yours who has told you that because there is social reform I am going to get my girl married late purposely? Have you ever discussed it with your friends?

A. There have been many discussions. I am myself keeping my girls unmarried. I do not marry them before they are 18.

Q. But your community is an advanced community?

A. We have had social movement since 1888. Since that year we have been regularly holding conferences.

Q. What was the condition in 1888?

A. The age was much lower than now. From 12 we have gone to 16 or 17.

Mrs. Beadon: You say you have seen cases in which injury has resulted from early consummation. Would you mind giving us details of one or two cases which might have occurred within the last four or five years?

A. I cannot give you any definite recent case. My father was a doctor and he told me of cases where there was very difficult labour and the girl died. She was about 12 or 13. It was about 20 years ago.

Q. You don't know of any recent case?

A. No.

Q. You have not heard of any?

A. I have not.

Q. What about the children of young mothers?

A. They are weak.

Q. Have you had any occasion of observing any?

A. I have observed one or two cases among my servants. I saw that they were particularly weak because the man had married a very young girl. The servants were living at my premises. One or two of the children even died when they were four or five months old.

Q. What was the age of the mother?

A. I think she was about 13.

Q. And the husband?

A. He was about 20.

Q. People will say that the mother could not afford proper nourishment. Did you see her or was she in Purda?

A. She was not in Purda and she was fairly strong.

Mrs. Nehru: When you say amongst the lower classes no *Gaona* is performed does it mean that no time elapses between marriage and consummation of marriage?

A. That is my opinion, unless of course the marriage is performed at 5 or 6.

Q. At what time is the marriage generally performed among those people?

A. I have known cases where the girl is only 5 years and the marriage has been performed. Of course time between consummation and marriage must elapse in these cases.

Q. Then necessarily *Gaona* is performed in these cases?

A. It may be called *Gaona*, *Rukhsati* or *Vida* among the lower classes. I don't know what it is called. But some such thing does take place.

Q. Do you think there are many people who believe in the sanctity of pre-puberty marriages?

A. I don't think so. People even do not know what the Shastras are unless somebody has read some Sanskrit or has been under the influence of Pandits.

Q. Don't you think that women generally have this belief.

A. Not among the Kayastha community.

Q. What about the Brahmin ladies?

A. I have had no occasion to talk to the Brahmin ladies.

Q. Nor have the men that idea?

A. No.

Q. But had they that idea some time ago?

A. I think they had.

Q. Do you have any recollection of those days?

A. There was a good deal of agitation when the first Age of Consent Bill was passed. I was a student in Agra College then. I remember there were meetings and discussions regarding this then.

Q. You think there is absolutely no idea about sanctity of pre-puberty marriage here?

A. I don't think so.

Q. Then what is the idea of marrying early? Why do they prefer early marriages?

A. My impression is that early marriages are made more on account of the anxiety of the parents to marry their girls than on account of any merit therein. They want that the girls may settle in life early and there may be difficulty of getting a bridegroom, afterwards.

Q. Is this Age of Consent Law known to the people?

A. I don't think so.

Q. Is it known even to the educated outside the circle of lawyers?

A. I think very few know it.

Q. In that case the law has not had any effect on the custom of marriage?

A. I don't think so.

Q. Then if the age is raised to 16 as you propose, do you think it will be effective?

A. I have said that I favour legislation fixing the age for marriage also.

Q. But if the Age of Consent is raised to 16 and only that law is possible will that be effective?

A. I think it will be.

Q. If the present law has not been effective, what are your reasons to think that if the age-limit is raised it will be effective?

A. People will be more affected by the advance in age and there will be surely more prosecutions and that will set matters right. That will give publicity to the law.

Q. Breaches of the law have taken place even under the present law?

A. Might have been.

Q. Are you not aware of the fact that there have been?

A. No.

Q. You don't think consummations have taken place before 13?

A. Might have been. I have not read of it in the papers.

Q. Well, then I tell you that cases have taken place. How do you think that merely raising the age to 16 will make the people abide by it?

A. Of course they will be punished.

Q. But the difficulty is who will bring those cases to light?

A. The difference in the age will be so appreciable that cases will be easily detected.

Q. Who do you think will detect them? Whose concern will it be?

A. It will be the concern of the people.

Q. Then are you in favour of making the offence cognizable?

A. Yes.

Q. Do you trust the police to such an extent as to allow them a hand in the domestic affairs of the people and allow them to investigate and make reports?

A. If the law is to be administered it must be done.

Q. But should it necessarily be administered in that way? Would you approve of it?

A. Yes.

Q. You think there is no harm in giving that power to the police.

A. No.

Q. Do you think this opinion of yours will be shared by the people in general?

A. I am myself of this impression that the people won't like it, but unless you administer the law in that way it will not be effective.

Q. What do you think if the power of complaint and prosecution is given to certain committees either of district boards or municipalities or specially appointed committees for the purpose or to certain recognised social reform associations? It will be their business to bring these cases to light, investigate them and make complaints?

A. If the power is given to certain associations or committees the case will have to be decided by votes. They will have to decide by votes whether the prosecution should be undertaken or not. In that case there will be a great chance of canvassing which I would not like.

Q. The committee need not necessarily be an unwieldy committee of a dozen persons. It may be of the few trusted.

A. I will agree if this power is given to a social reform committee consisting of selected persons. I think that would be a good substitute for the police.

Q. Do you think public opinion is sufficiently advanced to help these people or will they become very unpopular with the people?

A. I think public opinion is advancing and they will help in prosecuting such cases.

Q. Do you think the generality of people have sufficiently realised the evils of this custom?

A. I think they are now realizing.

Q. And they postpone the marriage consciously for the welfare of the girl?

A. Yes, I think so.

Q. What punishment would you like to give to the offenders against this Age of Consent Law?

A. I think the existing punishment of 2 years would do.

Q. Below 12 the punishment now is 10 years or penal servitude for life. Between 12 and 13 it is two years. Now you propose to raise the age to 16 would you have the same punishment?"

A. I would maintain the punishment of two years.

Q. Don't you think a lighter punishment would be better?

A. I am not in favour of lighter punishment.

Q. When you have made proper arrangements for the detection of such cases and when you raise the age to 16, don't you think there will be many cases occurring?

A. They have to be prosecuted.

Q. In that case there will be many who have to undergo punishment?

A. But once the deterrent punishment is given I think the people will be warned and you can keep the present limit of two years.

Q. Don't you think the idea of the world is changing about deterrent punishment and in the civilised countries there is a tendency to give lighter punishment?

A. I think we are not advanced to that extent, specially in cases like that.

Q. What will be the result of a high punishment in this case? Would it not harm the girl herself and prevent the people from bringing such cases to light?

A. Two years would be the maximum punishment. The court can in special cases award light punishment, even one month or two months.

Q. But would not simply taking the bonds to keep the boy and girl separate till the girl has reached a certain age do? The breach of the bond may be punishable by small imprisonment.

A. There is already a law for the first offenders, namely, section 562.

Q. Would you have that applicable to this also?

A. Yes, I won't mind.

Q. Would you have this punishment of two years in the case of a second offence?

A. It will be the nature of the offence that will influence the judge. The first offence may be very violent and the judge may think fit to award the punishment of two years. That all depends upon the nature of the offence.

Q. Would you retain the punishment of 10 years below 12?

A. I would retain it.

Mr. Mitra: You are of opinion that the Age of Consent in marital relations be raised to 16 and that it will be operative?

A. Yes.

Q. Then why are you for a marriage law. The object only is to provide against infantile mortality and early consummation and that would be achieved. There is a strong opinion amongst the orthodox people against marriage legislation. Why do you want to have that also? Is it merely as a second string to the bow?

A. That will make the law more publicly known.

Q. Only for publicity you want marriage law.

A. Yes.

Q. If we can make the consent law equally public?

A. I would be satisfied with that. Then no marriage law would be necessary.

Q. The only reason why this present consent law is not operative according to you is that it is not known. Is it correct?

A. It is not known and it is very difficult to detect cases and the difference between 12 and 13 is not so appreciable.

Q. Do you suggest that there should be stricter birth registration so that ages might be accurately known?

A. Yes.

Q. If this difficulty of ascertaining the age could be removed and sufficient propaganda done, could the present law be made operative?

A. Yes.

Q. Really you are not for any marriage law if the other law is made public?

A. That will meet the purpose if it is made public.

Q. Don't you think that the severity of sentence in the present consent law is a cause for cases not coming to court? It has been argued that people think that if the husband is sent to jail the whole family relationship will be jeopardised and therefore the cases don't come to court and they say if the rigour of the punishment could be mitigated more cases will come to light.

A. I do not approve of it.

Mr. Shah Nawaz: You say that in many cases the parents are anxious to marry their children early. Is this anxiety due to economic causes, or is it due to some other reason?

A. So far as the lower classes are concerned, I think it is due to economic causes. So far as the higher classes are concerned it is due to reasons such as religious merit.

Q. Do the lower classes desire to get rid of their girls?

A. Yes; because they cannot support them.

Q. Will not they have to support their daughters-in-law?

A. In low class families all people work. The father, mother, the son and the daughter-in-law work.

Q. Will not the daughter also work?

A. The parents of the girl do not want their girl to work in the same way as their daughter-in-law.

Q. Do you think we must resort to legislation with a view to eradicate this evil of early marriage?

A. Yes; I am of that opinion.

Q. You say that the Age of Consent Law will be effective without the law of the age of marriage. How will it be effective? It has been a dead letter so far.

A. It has been a dead letter so far because the difference is not appreciable between 12 and 13. If you raise the age to 16 either in marital or extra-marital relations I think the law ought to be more effective than it is now.

Q. Do you think that if boys and girls are thrown together soon after marriage they will keep self-restraint? Who is going to detect if they have cohabited? Whereas marriage is an open fact, consummation is a secret about which nobody knows.

A. Yes; it will be very difficult to detect consummation.

Q. Can you tell us the means by which it can be detected and brought to light?

A. It can only be done by some social reform agencies or by caste associations.

Q. Do you think legislation would be helpless?

A. Yes.

Q. Would you make it an offence if the husband and the wife are brought together? Would you penalise the parents or the legal guardians?

A. I would prefer to have a marriage law to that.

Q. Then what age would you have as the minimum age of marriage?

A. 16.

Q. Do you think that a law of marriage and a law of consent should go together, and one will not do without the other?

A. I said at the very beginning that I would like to have both.

Q. Have you come across many Brahmins?

A. Yes.

Q. What is their opinion as regards this question of early marriage?

A. Generally speaking the Brahmins who are under the influence of the literate Pandits think that the girl should be married at about 8. But those who are English-educated do not. But the illiterate Brahmins like to follow the example of the literate Pandits and therefore without understanding whether it is a religious merit or not they prefer to marry their girls early.

Q. Supposing we have a law of marriage, will the Brahmins acquiesce in it?

A. I think they will; they will not resort to any agitation.

Q. What is the opinion of women generally regarding this question of early marriage and early consummation?

A. So far as the Kayastha community is concerned, I may say that they marry late. I do not know about the opinion of the women of other communities.

Mr. Bhargava: Do you think that the evil of early marriage is very great?

A. I think it is.

Q. Supposing there is dissatisfaction amongst the orthodox people and they resort to agitation, are you in favour of ignoring their agitation?

A. I will.

Q. You might know that the Inspector General of Police in Patna said that 99 per cent. of the constabulary and 50 per cent. of the sub-inspectors in the province are corrupt. If that is so I would like to know why you like the cases to be made cognisable?

A. To prevent the evil.

Q. Have you any experience of the administration of crimes which are at present non-cognisable, and have you reason to believe that there is any dissatisfaction?

A. No.

Q. Supposing it is made non-cognisable, and complaints are brought?

A. Who will bring the complaints?

Q. The real difficulty is that persons are not coming forward to complain. Marriage will be a public affair, and obligation can be laid on the Mukhia or Patwari to maintain registers of marriages. If this law is effective, the Age of Consent Law will not be resorted to because the ages will be the same. What will then be your difficulty?

A. Instead of the police you will be creating another agency. I will have no objection if you can have another effective agency.

Q. Do you think any of the following agencies will be effective; registrars of marriages, or the registration of marriages by the Mukhia, or a committee of the District Board or the Municipal Board, or some social reform organisation. After all marriage is a public affair and it will not be difficult to prove. There will be factions in the village which will help detection.

A. If you can substitute an efficient agency for the police I have no objection.

Q. Would the agency I have mentioned, be sufficient in your opinion or not?

A. In my opinion any agency consisting of a few persons like social reform bodies or committees would do.

Q. Do you think that they should be recognised by Statute?

A. Yes.

Q. Do you think there can be a village panchayat committee of the district board with co-opted members from the mofussil?

A. Yes.

Q. Do you want the provisions of the Age of Consent Law administered in a punitive spirit or in a preventive spirit? Out of a number of cases that come, would you like that some should be given exemplary punishment to be a lesson to others?

A. Yes; I think if examples are made in one or two cases it will have a salutary effect.

Q. If that is your view, would you provide some agency to go through the cases reported before the prosecution is launched? The report may be made to the district magistrate and if the magistrate finds that there is a *prima facie* case then the case might be brought to court.

A. Do you mean proceedings as in section 202, Criminal Procedure Code?

Q. No; in that case the Magistrate will himself conduct the enquiry. In the other case before the prosecution is launched some agency goes into the evidence available, and if they find that there is a *prima facie* case then the case is brought before the court.

A. Then why not leave it to the prosecuting agency which you suggested, namely, a committee of the District Board?

Q. That is with respect to marriage law, but I am talking with regard to the Age of Consent Law.

A. I think proceedings should be under 202, Criminal Procedure Code, instead of the materials of the evidence being sifted by any person.

Q. At present the right of complaint in marital cases as well as extra-marital cases is vested in the public and anybody might complain. Would you leave that as it is, or would you say that the Crown should take it up?

A. So far as extra-marital cases are concerned, I think it should be the Crown who should prosecute.

Q. And intra-marital cases?

A. I would leave the law as it is.

Q. Do you realise that it is most difficult to get evidence in intra-marital cases? Would you make a legal presumption that whenever a husband and wife are brought together it shall be assumed that the act has taken place?

A. How can you say that the offence has been committed unless the evidence is there?

Q. The wife will not be a witness in such cases, how will you prove it, unless there has been manifest injury?

A. There will be medical witnesses.

Q. Do you think that if the girl is 14 or 15 there will be medical examination? It cannot be made unless it be with her consent.

A. Unless there is evidence of the offence, the mere fact that they have been brought together should not, in my opinion, be a ground for presumption of the act.

Q. It has been represented by several witnesses that there are very hard cases as, for instance, when a person wants to see his daughter settled in life if he is leaving her in such a situation that there will be nobody to look after her. It has been suggested that in such cases exemptions should be granted so that the persons may be able to apply to the district magistrate or district judge and get exemptions. Do you agree?

A. No.

Mr. Md. Yakub: Would you not give exemptions even in very hard cases when it will be detrimental to the interests of the girl herself?

A. Hard cases make bad law. I would not like that.

Q. Do you think the Indian Legislature will be justified if it fixes the age of marriage at 18?

A. I think it should not go beyond 16.

Q. What are your reasons for thinking so?

A. My reasons are that on account of climatic conditions of this country 16 is a good age for marital relations.

Q. Do you think that if girls are not married before 16 there is danger of their going astray?

A. Yes; I think there will be.

Q. If the age of marriage of girls is fixed at 18, what do you think should be the age of boys?

A. 21.

Q. Do you think there is any risk of boys also going astray if they are not married until 21?

A. I think so.

Q. In cases of breaches of the law of marriage to whom would you give the right of complaint?

A. Social reform boards or village Panchayats.

Q. Do you think the village panchayats will incur the wrath of the family in which the marriage is performed and go and lodge a complaint, especially in most of the villages where there are very few families, and every family has something to do with the other?

A. I think they will do it, if the duty is placed upon them.

Q. Would you punish them for neglect of duty?

A. Yes.

Q. Do you think it is possible to form such panchayats in all villages?

A. Yes.

Q. Do you think registration of marriages will facilitate the working of the law?

A. I think it will.

Q. On whom would you lay the duty of registering the marriages? And who should report the marriages?

A. The parents of the marrying parties, and if the boy is a major by the bridegroom himself.

Q. Who should keep these registers? Where should these reports be made?

A. Either with the District board in rural areas or in municipal boards in the municipal areas.

Q. Do you not think that it is a hardship for a villager to go to a District board office?

A. The District board will have to maintain an agency in every group of villages.

Q. Will you not give this power to the village patwari? In all villages there is a patwari and if he is the man who registers the marriages there will be no inconvenience.

A. I agree to that.

Q. Are you satisfied with the trial of matrimonial cases by the ordinary courts? Would you like that separate matrimonial courts may be formed with one stipendiary magistrate or judge assisted by two honorary judges?

A. I would like the ordinary courts.

Q. What are your objections to a matrimonial court?

A. My objection will be that it will be expensive.

Q. One Magistrate or Judge working in the district will be assisted by two non-officials who will be assessors or jurors. Instead of the two forums as at present there will be only one forum, and the girl will be saved from unnecessary publicity and scandal. The association of two public men from the town will be of great help.

A. If you make it appealable I will have no objection.

Q. You say that all marital cases should not go to the courts but that only some should be brought before the courts and severely punished to make an example. Do you not think that it will be making an invidious distinction in the administration of justice?

A. I said that if exemplary punishments are given in some cases others will be deterred.

Q. Do you want that some persons should be punished harshly and others should go scotfree?

A. No.

Q. Are you satisfied with the present system of registration of births?

A. No; it is neither satisfactory in municipal areas nor in the rural areas.

Q. What are the defects?

A. Sometimes the births are not reported or if they are reported they are reported many days or weeks after the birth.

Q. What is the penalty attached to omissions to report?

A. The penalty is never enforced.

Q. What improvements would you suggest in the method of the registration of births?

A. There should be some agency to register the births in the villages themselves instead of the village chaukidar having to go to the neighbouring Thana.

Q. And for urban areas?

A. We have got wards in the cities, and in every ward there should be an agency as there are agencies for vaccination.

Q. Do you know that as at present no names are given in the birth register, and that such registers will not be useful in determining the age if the question arises later?

A. Yes; the names cannot be entered because no names are given till some time after birth.

Q. Would you like supplementary entries to be made after the names of the children are given. The parents might be asked to make a supplementary entry in which the names might be given, so that the persons may be identified later?

A. Yes; it would be much better.

Mr. Kankaiya Lal: Supposing there is no marriage legislation, then what age would you recommend for consummation?

A. 16.

Q. Supposing the Legislature passes 14 as the age of marriage, what age would you recommend as the Age of Consent? You say that the age of marriage and the age of consummation should be same.

A. Even then I would recommend 16 for consummation.

Q. How would you arrange for the detection of breaches of the law between 14 and 16? Can you suggest any measures for bringing such cases to light?

A. I can only suggest social reform committees. I think they should bring these cases to light.

Q. Would you advocate the formation of vigilance societies for this purpose in towns as well as in rural areas?

A. Yes.

Q. Should they be nominated by the executive authority or partly nominated by the executive authority and partly by municipal and district boards and other recognised associations?

A. I think they should be wholly nominated by the public bodies including the municipal and district boards.

Q. Would you advocate village panchayats taking up detective and educative work in this direction?

A. Yes; there is no harm.

Q. Would you advocate the formation of Sub-Committees of Municipal boards and district boards to do both propaganda and educative work?

A. I do not think that the sub-committee would work properly.

Q. It has been suggested that these marital cases might be made compoundable, so that good relations might be reintroduced between the husband and the wife.

A. It is a matter for serious consideration, but I have not given thought to the subject. I think much can be said on both sides of the matter. I think in fit cases the court might be allowed to grant permission to compound.

**Oral Evidence of Mr. CHET RAM, Municipal Commissioner,
Allahabad.**

(Allahabad, 17th January 1929.)

(Vernacular.)

Mr. Kanhaiya Lal: Are you a member of the Municipal Board?

A. Yes.

Q. For how many years have you been a member?

A. Three years.

Q. Can you mention any communities in which marriages take place early?

A. Pasi, Chamar, Dhobi, Mehter, Khatik, Kangar, Dharkar, Ahir, Gadarriya and other lower classes have early marriage.

Q. At what age does marriage take place among them?

A. From 4 to 10.

Q. When does *Gaona* take place?

A. In some communities *Gaona* takes place along with the marriage and in some communities there is marriage then *Gona* and then *Thona* after which the girl goes to reside with her husband.

Q. When does it take place?

A. At about 11 or 12.

Q. After the girl attains puberty?

A. Yes.

Q. When does *Gaona* take place?

A. Sometimes along with the marriage and sometimes two or three years afterwards. If the girl is young she is not sent to her husband's house. "*Thona*" only takes place when the girl attains puberty.

Q. When do girls become mothers generally?

A. After a year or two maternity comes.

Q. Have you seen any evil consequences of early maternity?

A. I have seen instances where children are weak and mothers become weak and ill.

Q. After what age do you think there is no danger to the girl or her progeny?

A. After 16, 17 or 18.

Q. What remedy do you suggest for this evil?

A. If the girl does not go to her husband's house before 16 there will be no trouble. But the trouble is that on account of poverty it is very difficult to keep the girl till that age. Therefore if a law is to be enacted the Age of Consent should be fixed at 14.

Q. But then the evil consequences won't be stopped?

A. I realise that the apprehension of injury to the girl and the mother will continue if consummation is allowed at the age of 14 but my difficulty is that poor people who are labourers and workmen have not got enough means to maintain girls up to a very late age. Another evil is that if the girls are kept for a long time they run away with other people.

Mr. Bhargava: Have you seen any cases of girls of 11 or 12 running away?

A. By force they have been taken away, by the rogues. This evil should be remedied.

Q. The remedy is that the girl should be kept at the house of the mother up to a bigger age so that she may become stout and strong to resist those people?

A. The trouble is that even when the girl goes to her husband's house she goes wrong when she works in the fields as labourer.

Q. Then would you like that the present age of 14 for extra-marital cases be raised to 18 so that any man who has cohabitation with a girl up to that age even with her consent will be punished?

A. Yes.

Chairman: What age should be fixed for marriage?

A. 14.

Q. Before that there will be punishment for infringing the law.

A. Yes.

Mr. Bhargava: To the parents?

A. Yes.

Q. Will your biradari agree to it?

A. If there is a law they have to agree to it.

Chairman: Has any meeting taken place in your caste expressing a desire to raise the age to that limit?

A. I asked some of my caste people as to what should be done to prevent this evil and they said that either 12 or 14 may be fixed as the age for marriage.

Q. Will the people agree to it?

A. They will have to bow if the law is made.

Mr. Bhargava: Up to that age will a girl work in the house of her parents and earn a living and it will not be difficult for the parents to support her?

A. There can be no objection to 14 being fixed as the age of marriage because the girl will work as a wage-earner in the house of her parents.

Chairman: In that case may 16 be fixed for Gaona?

A. Yes.

Mr. Bhargava: What caste are you?

A. Pasi.

Q. Who is the "chaudhri" of your caste?

A. There are many.

Q. Is there no selling of girls among you?

A. No.

Q. Is there widow re-marriage?

A. There is.

Q. Have there been any cases of injury on account of early consummation?

A. Yes.

Q. Do the people of your community realise that it is an evil to have consummation at a very early age?

A. They do.

Q. If 14 is fixed as the age of marriage there will be no difficulty of getting suitable husbands because all will marry at that age.

A. There will be no difficulty.

Q. What do you think is the percentage of early marriages.

A. Out of a 100, 80 marriages take place early.

Q. Is the girl sent to her husband before puberty?

A. She is sent before puberty also.

Q. What is the difference between the age of the girl and the boy at the time of marriage generally?

A. One or two years.

Q. How is it then that consummation is brought about? The girl and the boy are both immature.

A. Really no consummation takes place. But "Thona" does take place even before puberty.

Mr. Mitra: Have you got any special Brahmins for your community?

A. No.

Q. Have the Brahmins got any influence over your community?

A. No. In our society marriages already take place much earlier.

Q. Do you want fine or imprisonment for the breach of the marriage law?

A. Imprisonment will be more effective.

Q. Have you got caste panchayats in your community?

A. Yes.

Q. Who should try these cases?

A. These caste panchayats should try to prevent early marriages and report these cases to court for trial.

Q. If there is a marriage law, is there necessity for consent law?

A. No.

Q. If the marriage law is not possible will you agree to have the Age of Consent Law?

A. Yes. The Age of Consent should be fixed at 16.

Q. Is birth registration accurate?

A. Yes.

Q. Even among the villages?

A. Yes.

Q. Would you be in favour of registration of marriages also?

A. Yes.

Q. Will that be helpful in proving the age?

A. Yes.

Written Statement of Hakim AHMED HUSSAIN Saheb of Allahabad.

1. As far as I know there is no general dissatisfaction with the state of law as to the Age of Consent as contained in section 375, Indian Penal Code, but in view of the illiteracy of males and females in India and the position which women occupy the Age of Consent is very low especially as to consent given under section 375. If there had been a clause to the effect that the consent obtained by fraud, or under fear of her being defamed that would have been a great advance in the matter inasmuch as the consent obtained is either by fraud or by the threat of their being exposed and defamed.

2. As past experience has shown that the consent is obtained in most cases by fraud as for the Age of Consent it should be increased to the age of 16 at least but this should not apply the age-limit for the husband.

4. Nothing can be exactly said about the amendment of 1925 being effective. As far as the marital relations are concerned the only remedy seems to be the stimulation of public opinion. The sexual connection between the husband and wife before the age-limit provided by the penal law is not capable of easy deduction.

5. Fourteen and fifteen as the second to my knowledge there exists no difference.

7. No.

9. Yes.

10. Sixteen.

Oral Evidence of Hakim AHMED HUSSAIN Sahib, Allahabad.

(Allahabad, 15th January 1929.)

(Vernacular.)

Mr. Kanhaiya Lal: You are practising here in Allahabad?

A. Yes.

Q. How long have you been practising?

A. For the last 40 years.

Q. Have you been connected with Unani conferences and other institutions?

A. I am a trustee of the Ayurvedic and Tibia College, Delhi. I was also a member of Ayurvedic and Unani Committee which held its sittings at Allahabad in 1924. I am also a member of the Board of Indian Medicine for the United Provinces, and of the Central Committee of the All-India Ayurvedic and Tibia Conference, Delhi. I am President of Anjumani Tibia, Allahabad, and a member of the Majlis-i-Intzamia of the United Provinces. I have translated *Tarikh-i-Im Khaldun* and have written other works.

Q. Have any cases come to your notice in which injury may have been caused to the girl on account of early consummation or early maternity?

A. Yes.

Q. Generally among the Mohamedans when do marriages take place?

A. Generally at 16 or later than 16.

Q. Is that in the towns or villages also?

A. That is the age both in cities and villages. I belong to a village but I am practising here.

Q. When do marriages take place among the lower classes?

A. Marriages take place early but consummation takes place later. Though marriages take place at 7 or 9 *rukhsati* ceremony takes place after *balugh*, i.e., after 14 or 15 but there may be exceptions.

Q. And where people marry at 15 or 16, does *rukhsati* take place immediately after marriage?

A. Yes, or a little later.

Q. What kinds of injuries have you noticed among the girls who are married early?

A. They suffer from tuberculosis, weakness of the nerves, they get trouble like cancer of the womb which sometimes proves fatal and osteo-malacia.

Q. What do you suggest as its remedy?

A. People should be educated and social propaganda should be done, otherwise the law of consent will be a dead letter.

Q. If a marriage age is fixed it will be a remedy by itself and you have already said that among the Mohamedans marriages take place at 14 or 15 so they will not be affected?

A. It will be against the *shariat* to fix the age of marriage. As regards consummation you may postpone the age. By fixing the marriage mullahs are likely to raise objection because Mohamedan Law does not fix any age for marriage and they would not like interference. But there would be no objection to fixing an age for *dukhlā* (consummation).

Q. What age should be fixed for consummation?

A. 15. From the medical point of view I would like 16 because at 16 a girl is fully developed but under the present conditions 15 is good enough.

Q. But cases of breach may not come to light?

A. It will not be effective but there will be some fear of law.

Q. Is the custom of *dukhlā* general among the Mohamedans in the United Provinces?

A. The practice of *dukhla* is in the same manner as *garbhadhan* is among the Hindus.

Q. How long after marriage *dukhla* takes place?

A. There is no fixed limit. If *nikah* takes place during minority, *dukhla* takes place when the girl is grown up; I think full puberty is not attained, i.e., parts do not become sufficiently well-developed and strong till the age of 16. There may be rare cases where it is not attained even at the age of 16 or where it is attained at the age of 15, but they are exceptions.

Q. If there is a law that *dukhla* should not take place before 16, will there be any objection?

A. No.

Q. If there is a consent law how can we detect breaches. If we ask Hakims and doctors to report such cases that come to their notice, will they help us?

A. I think breaches of the law may be detected by laying an obligation on the midwives, lady doctors, doctors, hakims and Vaidhyas requiring them to make reports of information that they receive about such occurrences but I do not think that the Vaidhyas and Hakims would like the idea of making reports if required. If they report such cases the patients will not come to them.

Q. Therefore it has been suggested that as breaches of consent law cannot be detected, there should be a law fixing the age of marriage?

A. Supposing there is an old man who has got a daughter and he gets a suitable husband. If they do not marry they may lose the boy. If there is a marriage law difficulties may arise when a man is ill and he has a girl to marry, and he would like to see her settled.

Q. If exemptions from the marriage law can be obtained in such cases on application to the District Magistrate, would it not suffice? If a man wants to marry his two daughters together on account of economic reasons he may obtain sanction to do it.

A. If a man lives in a village he will have to come to the city to apply for license?

Q. If village panchayats are authorised to grant exemptions, would that be practicable?

A. I suggest that *dukhla* should be penalised.

Q. What age would you suggest for marital cases?

A. It should not be less than 16 years.

Q. Do you think that a girl has proper understanding at the age of 16 years?

A. Yes.

Q. But you have suggested 16 for intra-marital cases, should it not be more for extra-marital cases?

A. Within marriage it should be 15.

Q. But you know that according to law the age of majority is 18 years, would you like to fix it at 18?

A. I think a girl is fully developed at 16.

Q. What measure would you suggest for detecting and punishing breaches of consent law?

A. I cannot recommend any particular measure but trials of these cases should be in camera and the punishment should be light.

Mr. Yakub: For the benefit of Musalmans during the time of Khulfa certain things which were allowed by *shariat* but which were harmful to the interests of the Musalmans were prohibited?

A. I do not know any.

Q. Hazrat Umar in the beginning forbade the widows of the Prophet to go to Haj?

A. I do not know.

Q. In Iraq Hazrat Umar forbade Mohamedans from buying lands?

A. I do not know.

Q. If during that time certain things were prohibited for the benefits of the Musalmans though allowed by *shariyat*, cannot we fix a law for marriage which is for the benefit of Musalmans?

A. No. If *rukhasati* ceremony is penalised I have no objection.

Q. In Bengal there are girls of 11 or 12 who become mothers and in India there are about 50 lacs Musalman girls whose marriages and consummation take place before puberty?

A. It is cruelty to humanity.

Q. Don't you think such a state of things should be remedied?

*A. It should be done by social propaganda and education.

Q. But social propaganda is being done for many years but nothing has come out of it. What method would you suggest for stopping this evil?

A. It should be by law or social propaganda. The education given to people should be such that they should know what will be the evil results of early consummation. Personally I have no objection to marriage law being fixed but mullahs would object to it and there will be a great hue and cry.

Q. It is laid down in the 4th Separa that the property of orphans should be given to them when they are fit for marriage and they are fit for marriage between 15 and 18. Abu Hanifa is of opinion that the age of *balugh* is 15 to 18. Therefore the inference is that the age of marriage is between 15 and 18.

A. I have not noticed this Tafsir.

Mr. Bhargava: You have said that there is no age fixed according to *shariat* for marriage nor is any age fixed for marriage. Then why do you think the marriage law will be opposed.

A. According to *shariat* there is nothing for or against *dukhla* or marriage. Quoran says that girls without husbands should be married.

Q. Then why do you oppose the marriage age being fixed?

A. There will be opposition to the marriage law but there will be no opposition if consummation is postponed.

Q. But that is also an interference in religion?

A. Personally I have no objection but people will object to marriage law.

Mr. Shah Nawaz: In Egypt there is the age of *nikah* at 15 and in Turkey it is 15. They have come to the conclusion that without stopping the *nikah*, the evil cannot be remedied?

A. I am answering all these questions from the medical point of view. It is for the maulvis to say.

Q. Supposing it is known that Mohamedans spend money on prostitutes and lose their property, should they not be stopped? Mahomedan Law says that a man is at liberty to deal with his property but in the Punjab there is a Land Alienation Act according to which they cannot sell their lands. It has benefited the Musalmans to a great extent. Don't you think it is the duty of Mohamedan kings to stop these things, though it may be against the *shariat*?

A. Yes.

Q. If among the Mohamedans the evil of early marriage exists and consummation takes place before puberty in many cases, and if we fix a marriage age and provide exemptions, why would the Mohamedans not like it?

A. If they do not like, what can they do.

Q. 75 per cent. of the Mohamedans marry early and consummation takes place early. What measures would you suggest for stopping the evil?

A. Even if you have a marriage law they may give a wrong age and say that a girl is 14 years, although she may be 13.

Q. If in the birth registers the name of the child is given and if there is registration of marriages giving the names of the marrying parties and their ages, that would be a check?

A. Yes. If there is any agitation it will be for the time being but it will die down after some time.

Q. Is it not the object of Islam that consent of the girls should be taken before marriage?

A. Yes. In the case of minors the consent of the guardians is taken and if they are major their consent is taken.

Q. But the general spirit of Islam is that they should be married when they are major?

A. Yes.

Mrs. Beadon: Have you come across any cases in which there was injury to young girls of 13, 14 or 15 on account of early consummation or early maternity?

A. Yes. Recently a case came to me in which the girl was married at 12 and there was consummation immediately after. There was rupture of the Vagina, inflammation of the womb and she had fever. She died. That was about 6 months ago.

Q. Was it among the Mohamedans or Hindus?

A. It was among the Mohamedans.

Q. What was the age of the husband?

A. 25 years.

Q. Any other case?

A. About six months ago I treated a girl. She was about 11 or 12, she was married and *rukhsati* ceremony had taken place. There was inflammation of the womb and she got osteo-malacia. This was a case among the Hindus. Displacement of the womb is very common in such cases. There is another case of a young girl was mother at the age of 13 or 14. She had no milk and the baby was very weak. The mother is also very weak. This was also a case among the Hindus.

Q. What was the age of the husband in this case?

A. 22 or 23.

Q. Were all these cases from well-to-do families?

A. The first case was poor but the second and third were from well-to-do families.

Written Statements of persons not orally examined.

Written Statement of Imperial Purdah Club, Allahabad.

1. There is dissatisfaction.
2. Advance should be made because husband and wife should not live together at the age of 13. A girl ought not to be a mother at such a tender age.
5. Age between 12 and 13. Puberty is attained earlier in the lower classes. This is the average age of girls of the higher classes.
6. Cohabitation generally soon after puberty.
7. The ladies believe that really there are no such religious injunctions.
8. Such ceremony is performed in this part of the country. As a rule a few months after attaining puberty. In rare cases after a year at most.
9. All the ladies are of opinion that it is not so. The ladies are of opinion that there should not be consummation of marriage till after a girl attains the age of 15.
10. Fifteen, that is, after completing fifteen years of age.
11. The ladies know of hundreds of such cases but will not give names.
12. Yes. They ruin the constitution of the mother and make her prematurely old and the children are intellectually and physically weak.
13. As ladies become more educated and mix more among themselves, among the higher classes the opinion in favour of raising the age of consent has increased. This may synchronise with the time of amendment as education of ladies in these parts is of recent growth and has increased rapidly only recently.
14. No.
17. We favour Dr. Gour's differentiation.
18. We suggest there should be no police investigation in marital offences but inquiries should be made by the headmen of the castes to which the parties belong and the headmen should send the case to court for trial.
19. See answer to question 18 for safeguard. There is likely to be collusion, which will be difficult to avoid, but the law will educate public opinion and a custom will spring up, in the opinion of the ladies, under which girls won't be sent to their husbands' houses before they are 15.
20. We recommend that marriage of a girl under the age of 15 should be prohibited by statute. When there is no such prohibition there is great difficulty in the way of brides' parents in refusing the invitation of the bridegrooms' parents to send the bride to the bridegroom's house after puberty.
21. The ladies do not believe that social progress will be quick enough and are of opinion that legislation is needed either by penal statute or better still by prohibition of marriage of girls below 15.

Written Statement, dated the 22nd August 1926, of Pandit JAWA-HARLAL NEHRU, Anand Bhawan, Allahabad.

9. I certainly do not consider that the attainment of puberty is a sufficient indication of physical maturity to justify sexual intercourse either

with a husband or another person. I think that the earliest child-bearing age should not be below 18, personally I would prefer it to be 20 or above. In no event must sexual intercourse be encouraged before 16. I believe it is recognised amongst leading sociologists that the best age for child-bearing from the point of view of both the mother and the child is after 20.

10. It is difficult to generalise on this question. I think that too much importance has been attached to the notion that puberty occurs earlier in India than in colder climates. This may be partly so but social customs, food and environment have a far greater effect on the age of puberty than climate. A healthy outdoor life will result in late puberty. In Europe generally puberty is supposed to begin in the 15th year but of course there are many exceptions on either side. In India it may be that puberty begins a year or two earlier, but this is largely due to social conditions. A girl of a well-to-do family doing no work is likely to have puberty earlier than a working girl. I can hardly imagine that a girl even of 16 or 17 has a full realisation of consequences of cohabitation. This would depend on education. In the absence of proper education a young woman of 20 may be sufficiently ignorant on the subject.

12. I certainly consider early cohabitation and maternity most injurious to the intellectual and physical development of the people and largely responsible for maternal and infantile mortality.

13. I think there is a definite development of public opinion against early marriage. Force of social customs may induce people to continue early marriages but they do so in an apologetic way. Even the poorest and most inarticulate classes are beginning to feel that early marriage is not desirable but they are powerless in face of old custom.

14. Among educated and semi-educated women there is a strong tendency against early marriages.

17 and 18. I do not see why a husband should be treated differently from any person if he abuses his wife. The difficulty can be got over by raising the age of marriage.

20. I cannot say which of the alternatives would be preferred by public opinion. Personally I think that a higher marriage age would be better. It must be always very difficult to find out when sexual intercourse takes place after marriage.

21. I am clearly of opinion that social reform must be helped and accelerated by means of legislation. Education and social propaganda must be carried on but the progress of reform will be slow unless legislation helps.

**Written Statement, dated the 28th August 1928, of Mr. H. DAVID,
Retired Subordinate Judge, Allahabad.**

2. I think the present law fixes too low an age of the victim for committing the offence of rape. The age is ludicrously low for married victims. This becomes doubly so, when the actual committing of the offence with a wife of still lower an age is made punishable with much lighter punishment. In respect of non-marital offenders also: I think law has fixed too low age. This I say, in reference to what I have heard about prostitution of girls of 12 years or lower. There are monsters who have created this class of low aged prostitutes. Such immature girls are to flaunt their virginity by dangling a nose-ring.

(5) I think 14 years, but puberty as shown by menstrual discharge is not an occurrence at a uniform age in all classes. Girls of poorer classes show such a development much later than girls of better and well-fed classes.

(8) Yes, but it does not depend on attainment of puberty alone. There may be other causes and circumstances that may accelerate *guona*, as for example poverty or death of the parents or the guardian.

(10) Certainly 16 years not earlier

(12) Most decidedly. Statistics of births and deaths and their averages in different Indian communities clearly show this. Amongst Hindus infantile mortality or premature deaths of the mothers are much higher than among other communities.

15 and 16. Even medical evidence on the point of exact age is frequently of doubtful nature at least not definitely positive. Differences between 12 or 13 years are not sharp and unmistakable especially amongst poorer classes. Of course 15 years would leave no loophole for the wicked to escape. (17, 20 and 21) Assuming that the present British Government will continue. I would deprecate any interference with marriage institute, whether based on clear edict or on long established custom. The marriage law to be affected by the Sarda Bill will be that of Hindus aggregating 22 crores of Indian population spread all over India from Thibetan heights down to Cape Comorin all over hills, dales and jungles in every varying degree of civilization or barbarism. After all, marriage is a religious matter and the Institutes of Manu are ever ringing in our ears. There are signs of change and reform in Hindu conception of marriage. People are no longer horrified at the sight of unmarried Hindu graduate girls crossing the sea to distant lands. Education will bring on reform even of marriage custom and if the British rule continues for a century or two many practices religious or otherwise will drop of themselves, and the Government will be saved of probrium of interfering with religion.

But I do regard the matter of the age of consent as a purely social matter. Marriage before menstruation might have been enjoined by Manu, but I am still ignorant of any religious injunction for consummation with immature married girls.

I would in the interests of humanity and even mortality sanction improvement of law in regard to the offence of rape. I would in section 375, Indian Penal Code, substitute 16 years for 14 years and in the exception substitute 14 or even 15 years for 13 years and in 376 expunge all words within bracket and also expunge 376-A, *in toto*.

For expunging both these I am of opinion that in granting such an indulgence is amply offering a tempting inducement to husbands under the influence of animal passion to gratify their bestiality. Then after all there is every likelihood of the bestial husband escaping even that light punishment. The poor girl and her guardians may not have the courage to seek to make an example of the offending brute.

Written Statement, dated the 13th August 1928, of Mr. MANMOHAN LAL, Special Magistrate, Allahabad.

1. No. There appears to be no dissatisfaction with the present state of law as regards age of consent. It is rather generally liked by the people in general.

(1) It must be retained, because it is likely to create and preserve a better state of things in respect of the crimes coming under sections 375 and 376.

(2) Raising the age of consent will undoubtedly be conducive to the physical, mental, moral and social well-being of the individual and his progeny, and the race in general.

3. Seduction is frequent but rape is also not uncommon.

The present raising of age of consent to 14 by the Act of 1925 has very little succeeded to prevent the ills mentioned in Query 3. Raising the age of consent will undoubtedly work for the desired result.

4. By putting of marriage and by stimulating public opinion in that direction will be the effective means of preventing premature cohabitation and its consequent physical and nervous breakdown.

5. Thirteen is the usual age of puberty. It varies indeed in different castes and communities. The lower class girls arrive at puberty somewhat earlier. Likewise the case of girls in those communities who are well-to-do and do not observe *purda* and allow free and active outdoor work and exercise.

6. Cohabitation is common—

- (1) before puberty in lower classes (pasis, chamars, ahirs, khachhis, koris, kumbis and dhobis).
- (2) Soon after puberty in all the classes of men.
- (3) It is very frequent in lower classes but in upper classes it also occurs in case in which there is early marriage.

None of these cases come to Court or if they come it is very seldom. Because to bring a matter to Court entails scandal and social degradation.

7. Yes, there are certain Shastras relating to marriage which ordain matrimonial ceremonies between 8, 9 and 10 years, and threaten the father, mother and brother with hell for non-compliance with the mandate. But it is less and less believed every day.

8. Gaona and Garbhadan are two different ceremonies and are never the same. The Garbhadan ceremony is tantamount to consummation of marriage. This Garbhadan is performed both before and after Gaona and also both before and after attainment of puberty.

Gaona is really the going of the bride to her husband's house for the 2nd time. Hence it is also called second marriage.

9. The attainment of puberty or the appearance of symptoms of puberty is by no means indication of sufficient maturity for child-bearing. The age of 18 years, or, at least three years after the indications of symptoms of puberty should be considered as the time best fitted for consummation for the purposes of progeny, that it may not be attended with injury of any sort to mother or child.

10. The age of 18 years should be considered as the minimum age when an intelligent consent can be expected. The reason is that in really adolescent stage the passion gains faster than reason and a girl in India lacking in education, living within the four walls of a house, with little opportunity for mental and intellectual development can very little comprehend the whole series of almost permanent wretchedness and degradation, mental anguish and suicidal tendencies that are likely to arise afterwards.

11. Such cases are very numerous and examples can be cited in abundance but it being a delicate topic the names cannot be revealed.

12. Yes.

13. There has been a development of the public opinion for the raising the age of consent but it is confined only to educated classes.

14. No.

15. Yes.

16. The difficulty and error will be considerably removed in raising the age of consent.

17—18. No.

19. Raising of the age of consent to 18 years will prove effective for both the purposes.

20. The raising the age of consent will be better accepted than raising the minimum age of consent.

21. Both measures are necessary. But strengthening the penal law will be more effective and more remedial in its results.

Written Statement, dated the 14th August 1928, of Mr. SRIDHARA PATHOKA, Sri Padam Kota, Allahabad.

1. Yes, because the age of 14 years is considered too tender and not sufficiently ripe for the purpose, and the awakened instinct of society wants it further raised.

2. An advance is advisable to ward off the physical and other evils arising and likely to arise from the low age-limit at present in vogue.

3. The answer to the first query is in the affirmative. The amended law has, I think, only partially succeeded in reducing the crime mentioned. I would suggest that the law be made more stiff.

4. Yes, to a certain extent under each head.

5. 11 to 14 years. [दशवर्षा भवेत्कन्या तत ऊर्ध्वम् रजस्तला Kashinath]—

Yes, it differs in different castes, communities and classes of Society due, to appreciable extent, among other things, to differences of *race, habits of life, customs and manners and social environments.*

6. It is not common, but occurs occasionally and cases come to Court also occasionally.

7. No, it is not attributable, so far as my belief and conviction go, to religious injunction, but to custom the basis of which seems to be the gradual increase of ignorance and misunderstanding or misrepresentation of Shastraic mandates during generations of Political subjection and degeneration—I would however note the following points:—

(1) There is current the following *Sloka* as apparent authority.

यो वै ऋतुमती भार्या सन्निधौ नोपसर्पति
अवाप्नोति समंदात्मा भ्रूषहत्याकृतावृत्तौ

Gobhila.

(2) I have heard it said that गर्भाधान (impregnation) is forbidden to be effected until after 36 monthly menstruations (covering a period of 3 years) have taken place.

(3) In certain quarters the opinion is held that a woman should not bear children before she is 21 years of age.

These statements are considerably conflicting, but they are cited to be taken for what they are worth.

8. Yes; and it coincides with the consummation of marriage. It is performed often promiscuously but in educated circles generally after attainment of puberty and as soon as possible after it.

9. Answer to the 1st part of the question is no. To attain the best results a period of 3 to 5 years should elapse after puberty before consummation is attempted. This would cover cases of early as well as late puberty. [I'de answer to question 5.]

Here it would not be out of place to quote some Sanskrit texts bearing on the matter:—

..ऊन्र षोडश वर्षाया ममातःपञ्चविंशतिम्
यस्याधो पुमान् गर्भं कुञ्चिलः स विषयते

Susruta.

पुमान् विंशति वर्षेष्टेपूर्णाषोडश वर्षाया
स्त्रिया संगच्छते गर्भाशये शुद्ध रजस्वपि
अपत्यं जायते भद्रं तयो न्यूनधर्मं क्षतम्

Jyotistatwa.

पूर्णाषोडशवर्षास्त्रो पूर्णविंशेन संगता
शुद्धेगर्भाशये मार्गैरक्तेशुक्तेऽनिलेहृदि
वीर्यवन्तं सुतं सूते ततो न्यूनादयोः पुनः
रोग्यस्यायुरधन्यो वा गर्भो भवति नैव वा

Vavbhatta.

10. At 16 in my opinion.

11. Yes; the child born died at birth or even before birth, and mother also died sometimes simultaneously, or became incapacitated or debilitated as regards a number of ordinary functions of life.

12. Yes, largely and I have been seriously thinking on this point nearly all my life.

13. Yes; and it may be taken as almost general, it is most in evidence in well educated and literate classes, especially the Arya Samajists and a not negligible proportion of non-Arya Samajists or Sanatanists in sympathetic touch with the Arya Samajists.

14. Yes, in the case of ignorant women in educated but less advanced families and generally in lower classes.

15. This is beyond my pen, I am afraid. It is a question for medical men, judges, and legal practitioners who have had actual experience in the matter to answer.

16. The raising of the age of consent ought to affect the question directly I should think.

17. Yes; and if I understand the matter rightly I consider the punishments provided in the schedule as proposed to be amended will be adequate.

18. I would suggest that powers of the Police be reduced consistently with trials being fairly and justly held. Also see reply to question 19 below.

19. The evils referred to would be appreciably reduced if such cases were in the first instance made over for enquiry and report to Committees of 5 members nominated by the Magistrate from amongst the respectable and educated people of the town concerned.

20. I consider that it will be more effective to fix the minimum age of marriage, as public opinion in favour of it is rapidly gaining strength, and in my opinion it will be advisable to raise the age of consent also at the same time.

21. I rely on both. The one would be strengthened by the other.

**Written Statement, dated the 13th August 1928, of Mr. CHAUBE
SALIG RAM PATHAK SAHIB, Collector and Magistrate, Banda.**

1. In the part of the country where I am stationed I do not find any appreciable dissatisfaction with the law as to the age of consent as contained in sections 375 and 376 of the Indian Penal Code, especially after the latest amendment raising the age of consent to 14 years.

2. I am for making an advance on the present law and would raise the age of consent of the girl to 16 years. The justification for this advance of

age lies in the fact that as in a majority of cases the girls in this part of the country do not attain maturity till they reach that age and also because motherhood before that age results in making the mother and child sickly for the whole of their life. Further I think the general awakening of society also desires that the age at which girls should enter into marital relations should be advanced in order to give them sufficient opportunity for the general education both literary and domestic.

3. The seduction of the girls is frequent in this part of the country where I am stationed and rape is not an infrequent consequence thereof. This District (Banda) adjoins the Indian State territories of Rowa, Panna, Charkhari and other small Bundelkhand Jagirs, and it not infrequently happens that the girls are kidnapped and abducted from one part of the country to the other. No doubt the amendment of the law in 1925 raising the age of consent to 14 years has to some extent helped in reducing the cases of rape outside the marital state but it has not in any way checked the improper seduction of the girls for immoral purposes. I do not think that any measures could be effectively adopted to make the law to check the evildoers. The question is more of economic importance than that of a legal one. Seduction of girls generally takes place when they find their homes and surroundings either slack or otherwise distasteful to them. It is generally amongst the low strata of society that cases of abduction are too frequent. If therefore the economic condition of the people is improved, I think the cases of seduction of girls would of themselves be immensely decreased.

4. The amendment of 1925 raising the age of consent within the marital state to 13 years to my mind has not had very appreciable effect in protecting married girls against cohabitation with their husbands within the prescribed age limit but there is no doubt that a general improvement in the social condition of the people has brought out a change and has been helpful in postponing the consummation of marriage and also in putting off celebrations of nuptials beyond 13 years. Public opinion has not sufficiently been awakened at present but I doubt not that in course of time it will have appreciable effect on it.

5. In this part of the country girls generally attain puberty between the age of 14 and 16 years. Yes, this period differs in different castes, communities and classes of society. In the menial and labouring classes where generally the boys and girls have their other occupations and have not constantly to be reminded of the domestic relations of man and woman the attainment of puberty is generally at a later stage. In higher castes and communities where the girls have not the same sorts of occupations and come to know of the relations between man and wife in their own household rather early in life, they have their conscience awakened and with the life of comfort and easy and better food and luxuries of life this class of girl comes to attain the age of puberty generally at an earlier stage.

6. Cohabitation in no class of people in this part of the country is common before the attainment of puberty nor soon after it and certainly not before the girl completes 13 years of age. I have had no such cases in Court. When such occurrences take place they do not frequently come to Court unless the case is one where owing to a vast difference between the ages and maturity of the parties and sexual connection results in appreciable injuries to the girl.

7. No; no religious injunction, so far as I am aware, does exist to justify the practice of the early consummation of marriage before or at puberty. Among the Hindus a text is generally quoted from the Sanskrit scripture that a girl should not remain in her parent's house after she attains the age of maturity. In the society as it existed before, this rule had no doubt a salutary effect as it checked and prevented the scandals that generally arise while keeping unmarried girls in household, where strict vigilance is not kept over the movements and actions of the girls. In regulated families this rule has not much significance and importance.

8. Yes. Gaona ceremony generally takes place in due observance of the Sanskrit text which I have referred to in my answer to query No. 7.

Generally the girls are married sometime before the age of puberty. They are not however sent to live with their husbands sometime after they attain puberty. It is this second ceremonial which is known by the name of Gaona. From the very nature of the case it is always anterior to the consummation of marriage and as I have noted before it is generally performed after the attainment of puberty which may be a year or so thereafter.

9. My reply to this query is that it depends on the particular person whether the attainment of puberty would be a sufficient indication of physical maturity to justify consummation of marriage. I do not think that any hard and fast rule could be laid down as to at what age and how long after puberty may a girl's physical development be considered enough to justify such consummation without injury to her own health and that of her progeny. As I have said it would depend upon the general up-bringing of the girl and also upon her surroundings.

10. I think 16 years would be a proper age in India where a girl could be competent to give an intelligent consent to cohabitation with a due realisation of consequence. Of course this depends on the general awakening of a sense of responsibility in the society. For the common run of uneducated parent the girls may not have intelligence till at a very later stage of adolescence.

11. No. I have not come across any such case.

12. Yes. I consider that early consummation and early maternity are responsible for high maternal and infantile mortality. And I also consider that the results often affect intellectual and physical progress of the people. It is notorious how early maternity leads to complications in case of births and delivery of children and how and often the puerperal effects are disastrous in certain conditions. Early maternity further results in the deprivation of the child of its mother's milk. Insufficient development of girls before maternity has the general consequence of the absence of milk in the mother's breasts. This gives rise to the pernicious system of feeding the child on outside milk and other ingredients which frequently have deleterious effects on the child. Maternity before sufficient intellectual development is not infrequently accompanied with a general indifference towards the rearing of the child. It is a common saying amongst the people that the quantity of the mother's milk depends on the quantity of affection which she has for the child. With insufficient development and intelligence the girls have less regard for children and consequently they can afford little nourishment to their own children. Thus the child does not survive long after his coming into the world.

13. No, there has been no further development of public opinion in this part of the country in favour of an extension of the age of consent in marital and extra-marital cases since the amendment of law in 1925.

14. No, in this part of the country the women do not favour early consummation of marriage for their children except it may be in very low and uneducated society.

15. The determination of the age of girls in connection with the cases under sections 375 and 376, Indian Penal Code, is a fruitful source of difficulty in the prosecution of such cases.

16. I think the raising of the age to 16 years might minimise or remove difficulties and for the same reason I answer this query in the affirmative.

17. Yes. I would keep the marital and extra-marital offences in different categories. I think the punishments already provided are suitable and sufficient.

18. I do not think that there is any necessity of making any difference in the procedure of trials for offences within and without the marital state but I would consider that the same publicity which is given to prosecution of extra-marital cases should not be given to cases arising out of marital relations.

19—20. I have no answers to give regarding these queries.

21. I would rather prefer to rely on the progress of the social reform by means of educational social propaganda than on the strengthening of the penal law to secure the object in view. As I have said in the earlier part of my replies I consider that the whole question of sexual offences depends not only on the relations between a male and a female but is generally a question of economic necessity and social conditions. I think with the reform of the society and improvement in education such offences might be materially decreased.

Written Statement, dated the 11th August 1928, of Rai Bahadur SANYAL DAS, Retired Junior Secretary, Board of Revenue, Allahabad.

1. My answer is that there is dissatisfaction to some extent.

2. I. The exception to section 375, Indian Penal Code, should be retained, as unless marriages below 14 in the case of girls are penalized, it is useless to raise the age at which a man can have sexual intercourse with his own wife and the present age of 13 should be retained.

II. As regards the age of consent proper provided for by clause 5 of section 375, there is need for the age being raised, because though the girls may attain puberty at that age, they do not attain enough mental development to make them masters of their own selves.

3. I am unable to say.

4. Very slightly. The highly enlightened classes, who can understand the law, do not marry girls before 13, while amongst the common people, there is entire ignorance combined with lack of self-control.

5. The usual age at which girls attain puberty is different amongst different classes, but in the absence of well-kept statistics, it is difficult to fix the ages of different classes.

6. I am unable to say.

7. I know of no such religious injunction, though the prevailing idea amongst the Hindus is that a Hindu father should give away his daughter in marriage before she attains puberty.

8. Yes, amongst the Hindus, gaona is performed in these parts. There is no fixed rule, however, as to whether it should coincide with or be anterior to consummation of marriage.

9. No. The best should of course be 16 when the girl attains full physical and mental maturity, but taking into consideration the present ideas and state of affairs, the age of 14 is high enough. In the case of already married people, it will be unnecessarily hard if consummation even after 13 is penalized.

10. At the age of 16.

11. No such experience.

12. Leaving the medical aspect of the question aside, it is evident that early maternity is the root cause of high infant mortality.

13. There has been some development of public opinion amongst the educated classes.

14. Amongst the Hindus, there is such an idea prevalent amongst the women.

15. No such experience.

16. Medical concern.

17. Extra-marital and marital offences should be separated. The present maximum punishment in the former case may be retained, while in the case of marital offences, the punishment should not exceed simple imprisonment for two years or fine or both.

18. The offences within the marital state should be bailable and a summons case, but the evidence in all such cases should better be taken in camera.

19. In the offences within marital state, there is danger of collusion, and so the offence should be made non-compoundable, but extortion in some cases shall also have to be guarded against.

20. Legislation fixing the minimum age for marriage will be more effective and also in consonance with public opinion in this part of the country.

21. I would much prefer progress of social reform by means of education and social propaganda to a strengthening of the penal law on the subject.

**Written Statement, dated the 12th October 1928, of Rai Bahadur
LALA SITA RAM, B.A., M.R.A.S., etc., 203, Muthiganj,
Allahabad City.**

1. None as far as I know.

2. The "age of consent" as fixed by law makes no difference to the person blinded by lust. A case came up before me in Dehra Dun in which a scoundrel tried to rape a woman old enough to be his grand-mother, when she was performing offices of nature in a field in open day light and her clothes were soiled with filth in the indecent assault. Only two cases have come up before me in which the girl's age was less than 8 years and in one case it was eleven years. In another case a gentleman accused his servant of having sexual connection with two girls aged ten and twelve years but the servant alleged that his old master was his rival. There was no doubt that the girls had been defoliated but there was no evidence. A case of an indecent assault on a young girl aged 7 years was converted to one of an attempt to rob her of her ornaments. These are cases of girls raped other than wives. I do not know of any case in which a husband was allowed to have connection with his own wife under the age of 13. To the European the word marriage implies consummation. I remember in one case the wife of a high officer of Government was invited to inspect a girls' school of which I was one of the managers. On seeing the vermilion mark on the parting of the hair of one girl aged about ten, she said "What does that vermilion mark mean". I said "She is married". On hearing my reply she made a long face and said "Married!" I promptly replied "No madam not in the sense that you understand it. Certain ceremonies have been undergone with a boy of her own age. She is living with her parents and even if she goes to her husband's house, her husband will not be allowed to approach her till she is grown up". Indian parents are neither fools nor fiends and know what will spoil the health of their children. There is therefore no necessity of modifying the present law.

3. The crime of seduction is very common in certain districts. Ninety per cent. of the seducers in Moradabad were Muslims. Only one case of forcible abduction was tried by me in Allahabad in which the girl was of the Ahir caste and the offenders were Muslims. The law has made no material alteration in the practice. I have read of several cases of seduction in which the girls were rescued by Arya Samajists. It is difficult to suggest means for making the law effective specially when even the injured party tries to conceal the offence for fear of loss of and of being considered unfit for marriage. I am not in favour of giving any extra powers to police.

4. No such cases have come to my notice. The only point in which I am prepared to give an opinion is (3) Hindu fathers know the difficulty of getting suitable husbands for their daughters. In most families astrological considerations stand in the way of a suitable alliance. I know instances of fathers who begin their search for suitable matches for their very young

daughters. I have asked them why they were in a hurry and was told that it would take 3 or 4 years to find a good match. The girl is only 12 years old. The parents of the boy want him to be married soon. If the poor girl's father does not agree to celebrate the marriage at once, the boy will be married to some one else. There is no dearth of girls here.

5. There is no fixed age. Among the labouring classes the age is higher, sometimes over 14, but among the well-to-do it is 11. All the girls in my family have commenced to menstruate at the age of 11.

Another circumstance leading to early puberty is the school education. Girls in my younger days did not know marital relations before the age of 14 or 16. In schools however they learn without a teacher and once they understand it the desire to get married gives a stimulus to sexual development and unless they are married soon they become miserable and hysteric.

6. No, except in cases of persons to whom enjoyment of sexual pleasures in the *summum bonum* of their lives in this world and hereafter. Forceible cohabitation cases (rape) which came up before me in court have been mentioned above.

When I was Treasury Officer of Lucknow in 1910 I had to pay pensions to several old ladies who were said to be (*mutai*) wives of the late kings of Oudh. Now the King of Oudh was deposed in 1856 and at the time of the alleged *mutai* these ladies could not have been more than 10 or 12 years old. The Oudh monarchy has long disappeared but the consideration that sexual connection with a girl under thirteen has a rejuvenating effect on old men still prevails.

7. No, except in Bengal. More than 30 years ago when the age of consent was raised to 12 years there was agitation in Bengal and as in Bengal menses appear at an early age it was alleged that consummation after the first menses was enjoined by religion. There is no such injunction in this part of the country. I know of a verse of Kashi Nath's Shigrabodha in which it is remarked that the parents and the elder brother of a girl who has begun to menstruate and is not married go to hell. It is however *obiter dictum*.

8. There is no garbhadan ceremony in these provinces. The gaona may be performed but if the girl is young she goes back to her parents after a day or two without meeting her husband.

9. No. Physical development to justify consummation depends on the circumstances of each family.

10. Any age above 12 when she knows that there is pleasure in consummation. This knowledge is attained in various ways including watching the habits of animals and association with girls of sexual experience in schools. Realisation of consequences is always a secondary affair. It is impossible to love and be wise, with the words "to be lustful" substituted for love. In Shakspeare's Romeo and Juliet, Lady Capulet became mother at the age of 14 and Juliet falls madly in love at that age. India is a much hotter country than Southern Europe.

11. No cases have come to my notice.

12. I am not a medical man but from what I have seen early maternity is not responsible for high infant mortality. In the present state of educated society which is copied by the uneducated, a wife must be constantly in the company of her husband. As soon as she leaves the lying-in-room she sleeps on the same bed with her husband and cares little for the infant. With the sexual excitement the milk supply is cut off and the child has to be fed by spoon. The modern educated (?) girl does not know how to cherish her children. This in my opinion is not only the cause of high infant mortality but also of the shattering of the health of men and women and one has only to go to the Jumna Dispensaries here (Allahabad) to see the large number of cases of pulmonary consumption.

13. No, except in the brains of *psuedo* patriots who find in the alleged social evils the bacteria of their country's economic and political consumption.

14. No.

15. We all depend on medical evidence which is conclusive.

16. Not in my opinion.

17. The extra-marital offence may be punished as before but the punishment for the marital crime must depend on the merits of each case and may not exceed two years' rigorous imprisonment.

18. The trial for marital offences should be in camera and before a senior Indian Magistrate.

19. The public should have no authority to chalan marital offences.

20. Yes. Fixing the minimum age of marriage would be highly improper and cruel to parents so long as the society does not make suitable arrangements for marrying boys and girls.

21. I rely on education and progress of social reform to secure the object in view. There is a class of men who make capital of making the Government unpopular and any legislation even at the instance of Indians with the best intentions is giving a handle to such men.

Written Statement of Mr. LAKSHMI NARAIN TANDAN, B.A., LL.B., Sessions and Subordinate Judge, Fatehpur.

1. I cannot say anything with regard to the Age of Consent inside marital relations but the Age of Consent which the present law prescribes for strangers is generally considered rather low.

2. I think an advance should be made on the present law and the Age of Consent inside marital relations be raised to 14 and outside marital relations to 16. In my opinion girls suffer too much in health and general development by reason of their becoming mothers too early.

3. I do not think that the crimes of seduction or rape are frequent in my part of the country and in regard to the amendment of the law made in 1925 I do not think that sufficient time has elapsed to enable one to form any opinion about it. The punishment for rape outside the marital state should in my opinion be enhanced.

4. I do not think that the amendment of 1925 has had anything to do with it but it does appear that marriages have begun to be celebrated after the girl has attained 13 or 14 years of age. This in my opinion is the effect of the general awakening in society.

5. I think the usual age at which girls attain puberty in almost all classes in my part of the country is 13 or 14.

6. I cannot give any opinion on the point, but so far as I know cohabitation is not common before the girl attains puberty.

7. I do not know of any religious injunction for the consummation of marriage.

8. Gaona is usually performed in my part of the country before the consummation of marriage. It is generally performed after the attainment of puberty—the time between the attainment of puberty and the celebration of Gaona being generally from 1 to 3 years.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. I think that at least 2 years should elapse between the attainment of puberty and the consummation of marriage in order to avoid any injury to the health of the girl and that of her progeny.

10. I would put the age at 16.

11. I have come across cases in which cohabitation after puberty but before full physical development resulted in serious injury to the girl's health

and also affected the children born of her. In one case the age of the girl was about 15. She died of consummation as the result.

12. I am decidedly of opinion that early consummation of marriage and early maternity are in a great measure responsible for high maternal and infantile mortality. I am also of opinion that the children born of boy fathers and girl mothers cannot possibly attain to the standard of intellectual and physical progress which would be reached by the progeny of grown up and fully developed couples.

13. There is a general consensus of opinion among the educated classes that the Age of Consent in extra-marital cases should be raised to 16. They are not satisfied with the amendment of the law as made in 1925.

14. Women in my part of the country do not now favour early consummation of marriage for their children.

15. Difficulties do occur in determining the age of girls in connection with offences under Sections 375 and 376 of the Indian Penal Code, when the age just borders on the prescribed limit. The only thing to depend upon is medical evidence, specially X-ray test and other independent evidence of near relations. I would suggest the stringency of the present law as to the preparation of Birth Registers.

16. I do not think that the difficulty on this score would be materially reduced, or minimised by raising the Age of Consent to 14 years or even above.

17. I would separate extra-marital and marital offences into different offences. I would fix the maximum punishment for marital offences to fine only. For extra-marital offences I would enhance the punishment by a year or two more.

18. I would suggest that the trials for offences within the marital state should be held in camera and that the wife's evidence alone should be held conclusive. I would not change the present procedure for offences outside the marital state.

19. I cannot suggest any other safeguard.

20. In my opinion legislation fixing the minimum age of marriage would be more effective than legislation fixing a higher Age of Consent. Fixing a minimum age of marriage—which in my opinion should be 13 at the least would be in consonance with public opinion in my part of the country.

21. I would rely on both. I mean the strengthening of the Penal Law as well as social reform by means of education, and propaganda work to secure the object in view.

Written Statement, dated the 14th August 1928, of Mr. RAM AGHAL LAL SRIVASTAYA, Mathematics Department, University of Allahabad.

1. Yes, there is, but only amongst the educated class of people who know and understand the meaning and object of the sections. The masses do not even know whether there is such law.

2. Following circumstances in my opinion justify making an advance on the present law :—

- (i) As the country is very backward in education, and female education is most unsatisfactory, a girl of even 16 is ignorant of the world's ways, she cannot be expected to have discretion specially when she is placed in some difficulties or under allurements. She has little resources to help her in exercising discretion, all that she possesses is what she could pick up—passively, in her father's family, living with ignorant and illiterate mother and other relations, who themselves very seldom go outside the family circle.

(ii) At the same time crimes have increased. We frequently hear of elopements and rapes.

3. Crimes of rape are not so frequent as those of seduction. The amendment of the law made in 1925 has no appreciable effect in reducing the cases of rape or seduction. The inefficiency and immoral practices of the Police and expensive system of litigation has been and is responsible to great extent.

4. No, it has got no effect upon the people, no changes in the marital state.

5. Between the age of 12 and 15. Yes, it differs in different castes and classes of society. Girls of very rich and those of low caste attain puberty sooner.

6. (1) Very very rare.

(2) Yes.

(3) If girl is considered to have attained puberty when she begins to menstruate. Hence it is not common before 13 years.

7. No.

8. Yes. In Kayasthas and Kshatriyas and rich and respectable families of any caste, *Gaona* ceremony is usually performed coincident with the consummation of marriage. But in low castes and class of people it is performed anterior to the consummation of marriage. It is generally performed soon after puberty within a year or two.

9. No. According to *Mano* or other books on Brahnmacharya and from experience three years, after puberty, must pass before consummation. But in the case of lean, thin and weak girls this period should be even extended to four.

10. They are too ignorant to give intelligent consent.

12. I have come across many cases in which cohabitation after puberty but before full physical development of the girls resulted in the death of the children. But I know details of three cases only. (1) In one of the cases the girl was of 12 years and the husband was of 40 years, a male child was born. The child was very thin and lean and died after two weeks. But the health of the girl is not injured appreciably. She is now mother to two healthy and beautiful children who are living. One is a boy the other is a female child. (2) In the second case the girl was 16, the husband 25. A female child was born. The child survived but has this year died in her tenth year. But the mother's condition is pitiable. She is still living. Within the period of three years after the delivery of the child she became quite crippled. Just after the delivery she fell ill and suffered from fever and cough. Then at last she was cured of all diseases but she cannot move from her place. Neither she can get out of the bed nor move this side or that. She always lies against her back. She has been reduced to a skeleton. She does everything lying in the bed. And she is still living at present and is only 26 or 27 years old. (3) In the 3rd case the girl was between 15 and 16 (and husband 34) when she gave birth to a child of only seven months. While the child was in the womb the mother used to suffer from stomach pain and had pains in her joints while walking. The child (male) died within a year of its birth. It is great pity that 13 months have passed since she gave birth to the child and 4 months since the child died yet she has not recovered herself. She has become very weak and suffers from joint pains while walking.

12. I do consider early consummation and early maternity responsible for high maternal and infantile mortality. They vitally affect the physical and intellectual progress of the couples concerned as well as that of the surviving children.

13. Not appreciable.

14. Yes, as early as possible after the age of puberty being attained.

20. At first instance people would like none of these legislations. But if they had to choose, they would choose penal legislation fixing a higher Age of Consent for marital cases, because of the prevalent custom of child marriage. But in my opinion legislation fixing the minimum age of marriage will be more effective than the other legislation which is very difficult to enforce.

21. I would prefer to rely on the progress of social reform by means of education and social propaganda. What is needed is to change the public opinion about marriage and convince people that early marriages and early consummation is vitally harmful.

I do not think that the penal law will secure the object in view. The reasons are obvious:—

(i) Firstly it is very difficult to enforce it. It will give one more instrument to the police to trouble the public. There is no denying the fact that the existing Indian police is far from being efficient.*

(ii) Litigation will increase unnecessarily.

Hence it is my firm conviction that under the present circumstances penal law can do no good. If we really want to improve the condition of poor India at all, we secure the object in view only by education, social reform and social propaganda.

Written Statement, dated the 19th August 1928, of Moulti FAKHRUL HASSAN QUADIRI, Sub-Divisional Officer, Gopalganj.

1. There is no dissatisfaction in this part of the country with the state of law as to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code. The custom of early marriage and early consummation has been in existence for such a long time that a departure from it instead of being considered an improvement is regarded as an innovation. When cohabitation before the Age of Consent is allowed by parents in marital cases who cares for cases in which the connections are immoral.

2. I am in favour of the proposal of making an advance on the present law of the Age of Consent, on the ground of health in marital cases and morality in extra-marital ones; although I am not sure if the proposed advance will in all cases prevent the corruption of young girls in cases of immoral connections.

3. The crime of rape is very rare in this part of the country but not that of seduction. I do not think the amendment of the law made in 1925, raising the Age of Consent to 14 years has succeeded in preventing or reducing cases of rape outside the marital state or the improper seduction of girls for immoral purposes. This is due to social customs and want of education and in some cases due to poverty.

4. The amendment of 1925 raising the Age of Consent within the marital state to 13 years has not in my opinion produced any effect in protecting married girls against cohabitation with husbands within the prescribed age limit. The consummation of marriage takes place not on the basis of penal laws but on the basis of social customs and religious beliefs regarding auspiciousness of times. To improve the existing state of affairs in this direction what is really required is the reform in social customs and religious beliefs and not the amendment of the existing law.

5. The usual age at which girls attain puberty in this part of the country is about 14 years. It differs in different classes of society only to the extent that girls who go out in public and work as labourers attain puberty later than those who live in *Pardah*.

6. Cohabitation is not common in this part of the country in any class of persons either before puberty or soon after puberty or before girl completes 18 years. No such case comes to Court.

7. The questions do not arise (*vide* above).

8. *Gaona* ceremony is performed in this part of the country and it coincides with the consummation of marriage. It is generally performed after the attainment of puberty within a year.

9. I do not think that the attainment of puberty is a sufficient indication of physical maturity to justify consummation of marriage. In my opinion it is at the age of at least 16 that a girl's physical development may be considered to be enough to justify consummation without injury to her own health and that of her progeny.

10. It is difficult to fix one age limit for the whole of India as climatic conditions have greatly to do with the health and development of girls. So far as this part of the country is concerned, I think, it is not before 16 that a girl may be expected to give intelligent consent to cohabitation with a due realisation of consequences.

11. I have got no such experience.

12. A doctor's opinion on this point would be more useful. Personally I think that early consummation and early maternity is to some extent responsible for high maternal and infantile mortality and other results affecting the intellectual and physical progress of the people.

13. There has been no such further development of public opinion in this part of the country.

14. Women in this part of the country do favour early consummation of marriage for their children.

15. The age of girls in such cases is given by doctors. I have not come across any case of difficulty in determining the age of any girl. I do not think there is any other more feasible method of ascertaining the age.

16. I do not think the difficulty or margin of error in determining the age would in any way be reduced or minimized if the Age of Consent is raised to 14 years or above.

17. No case of marital offence is brought to Court nor can it ever be expected to be; but it is desirable to separate extra-marital and marital offences into different offences. I do not propose any amendment to the existing law on the point of punishment.

18. The existing procedure is quite good.

19. I cannot suggest any.

20. I do not think that penal legislation fixing a higher Age of Consent for marital cases can be more effective than legislation fixing the minimum age of marriage. But the latter would not be in consonance with public opinion in this part of the country as people will consider it an encroachment on their personal, social and religious rights. Besides this, poor people, in many cases, marry their girls in young age because of their inability to support them and it would be a great hardship to them if they are prevented from doing so by law.

21. I prefer to rely on the progress of social reform by means of education and social propaganda. The strengthening of the penal law would not be liked by people who would consider it an interference by Government with their personal, social and religious rights.

Copy of letter, dated the 7th August 1928, from the Hon'ble Justice Dr. J. C. WEIR, K.C., LL.D., Judge, Allahabad High Court.

In reply to your Circular letter No. 42-A. C. C., of the 26th July, I am sorry to have to say that I do not think my opinion on any of points raised by your questionnaire, except Nos. 18 and 20, would be of any value.

R. Offences "Within the marital state". These should be treated in camera. The public should be excluded.

20. I think that if the problem of child marriage is to be tackled seriously, the best and the least invidious way is to penalise marriage below a minimum age. This would avoid the necessity for trying to find out what happens in the *zenana*—an enquiry of that kind is bound to be uncertain in its results and exceedingly painful to all parties concerned.

Written Statement, dated the 7th August 1928, of Mr. H. CECIL DESANGES, M.L.C., Bar.-at-Law, Allahabad.

1. Yes.

2. (2) Because Indian girls before attaining 16 years generally do not acquire enough intelligence as to understand the consequences they would incur outside the bonds of wedlock.

The girls in India are not physically developed for consummation of marriage at 13, in most cases; and if marriages are consummated at 13, it affects the progeny.

3. I give authentic figures from the Administration Reports of Criminal Justice; the figures speak for themselves.

	Reported Kidnapping.	Reported Abduction.	Reported rape.
	U. P.	Oudh.	U. P. Oudh.
1923 . . .	962	286	259 67
1924 . . .	912	271	199 59
1925 . . .	1,112	296	247 72
1926 . . .	1,157	346	209 54

4. (2) It has stimulated public opinion, but not to such an extent as is desirable.

4. (3) I would suggest that *gaona* be put off to 16 years.

5. Usually at 13 in the lower classes; if not properly fed at 14.

6. (1) Not common.

(2) Common.

No. They do not come to Court.

7. To Custom; (not to religious injunction).

8. *Gaona* is usually performed in the United Provinces. It coincides with the consummation of marriage.

Gaona is performed a few months after attainment of puberty.

9. No. Depends on health.

The lowest age should be 15 years, in the interest of the mother and child.

10. At 16.

11. Cohabitation before puberty *does* result in injury to her health; I have not followed cases to the progeny, but the child must suffer in consequence.

12. I do. Were it not for this, I believe, intellectual and physical progress of certain classes of people would be higher.

13. Public opinion in my part of the country among the educated classes (excluding a few orthodox) is in favour of raising the age.

14. No. .

15. Yes. I would make it the Law that all births (and deaths) should be reported and recorded with particulars, at the nearest Police station, and at the nearest Municipal Office, and that these Registers should be main-

tained with as much as accuracy as the Register of Births and Deaths are maintained in Christian Churches.

16. Difficulty or margin of error in determining the age would be minimised if the Age of Consent were raised to 16 years.

17. I would separate the offences for non-marital and marital offences. For non-marital offences 7 years (but would not come under Section 562, Criminal Procedure Code). For marital offences I would have 2 years maximum.

18. Yes, for marital offences, triable by a Magistrate, I class; for non-marital offences by Sessions Court.

19. In marital cases any parent of the girl, or brother or sister or Uncle or Aunt could make a complaint.

20. I consider that penal legislation fixing a higher Age of Consent for marital cases would be more effective. The procedure in the first part of this para. would be in consonance with public opinion in these parts.

21. Both.

Written Statement, dated the 8th August 1928, of Mr. CHAMPAT RAI JAIN, Vidya Varidhi, Bar-at-Law, The Jaina Hostel, Allahabad.

1. People are mostly indifferent to and ignorant of consequences.

2. (1) No.

(2) Yes. See below.

3. No. Education, social reform, prevention of early marriage, etc., etc.

4. No, I do not think so.

(1) No.

(2) Perhaps, but if so hardly appreciable.

(3) No.

Penalising marriage at an improper age.

5. What is puberty? If it means capacity for sexual intercourse, then at any age after 11. If it means capacity to bear child, then at least 18.

6. (1) Yes.

(2) Yes.

(3) Amongst all classes it is common in all cases under 1 to 3.

Hardly ever, except when a charge of rape is to be preferred.

7. There is some sort of religious sanction, but not authority truly speaking. The punishment is the ridiculous infliction of suffering in hell!

8. (a) Yes.

(b) Usually coincides with the age of enjoyability.

(c) Soon after the attainment of the capacity to be used for sexual purposes.

9. See answer to Nos. 5—18.

10. At 18.

11. Half the girls that die in child-birth die of the effects of bearing a child before the pelvis and the other organs, e.g., the womb are fully mature. Many die in the second confinement. The children are sickly, rickety nerveless energyless, ambitionless liels on humanity who are fit for nothing either physically or mentally or even morally.

12. Yes, yes.

13. I don't know. Not general in any case.

14. Poor dumb driven cattle have no voice nor even understanding of things. Probably they do!

15. A more detailed and strict registration of births.

16. I don't think so. The medical opinion might place the same girl at 11—19 (in one case the Civil Surgeon of one District said the complainant was 11, but of another District that she was 19). The early application of the sexual stimulus is not unlikely to force the pace of the appearance of the outward marks of development (puberty).

17. 10 years. 5 years.

18. Inspector, not Sub-Inspector, to investigate cases against the husband. Anybody could be the complainant. Before anything further, court should enquire into the age. If age immature, the court will be deemed to have jurisdiction. It would then employ the services of an Inspector to make investigation.

19. False cases must be dealt with by the court at once which *shall* sanction, i.e., order the prosecution of the complainant. Full term of imprisonment may be awarded unless special reasons exist for not doing so. There can be hardly any effective safeguards against collusion in such a case, except that you may punish the abettors. That however will mean your catching them in the first instance.

20. (1st part) Penal legislation is not very likely to succeed in marital 'rape'. The other alternative will be surely effective.

(2nd part) Educated opinion should be in favour of the above view. The generality of men have no opinion. They will say and can be made to say anything.

21. On the whole on social reform, but the raising of Age of Consent is not unlikely to prove some sort of a deterrent in at least a small percentage of cases.

Written Statement, dated the 10th January 1929, of Mr. RAMDAS KRISHNA, Allahabad.

1. I have no dissatisfaction with the existing law as to the Age of Consent as contained in Sections 375 and 376, of the Indian Penal Code, although there is room for improvement.

2. The main circumstances which in my opinion justify the non-retaining of the present Age of Consent as it is, or making an advance on the present law, are *primarily* the *Improvement of the Race* (Indian) in the first instance.

3. Pretty common.

The amendment of the law made in 1925 raising the Age of Consent to 14 years has not, I believe, succeeded in preventing or reducing the cases of rape outside the marital state, or the improper seduction of girls for immoral purposes.

4. No.

The measures suggested are, firstly the general social uplift of the people by moderate legislation, or education indicating and insisting on that kind of uplift, namely:—

- (a) By starting an educational programme explaining to **the people** in general the *vital* necessity of delaying the consummation of marriage,
- (b) and thus creating public opinion in that direction.
- (c) By legislation, if and when it is found that people generally have not appreciated the good that must ensue as the result of such a reform.

5. The average is 13 or 14, and in some abnormal cases even below the age of 13.

It has not very much to do with the differences of *caste*, community, or class of society.

6. In many cases, Yes. There have been numerous cases as evidenced in the law Courts, or known otherwise.

7. It is case more of a matter of *Custom* under the guise of religion than anything else.

8. In the United Provinces, and generally in the North, the ceremony of *Gaona* or *Garbhadan* is not so pronounced in its rigid performance as in other parts of the country.

In the higher castes a little mercy is shewn to the *child-wife*, but amongst the lower classes the ceremony of *Gaona* is more or less a farce, and largely depends on the whims of the *man-bridegroom*, and consummation takes place almost immediately after puberty.

9. I do not consider the attainment of puberty as sufficient indication of physical maturity for the consummation of marriage or cohabitation.

As a general rule for the good of the average individual I would suggest consummation of marriage only after at least two years of puberty without danger to the *girl's* health, or that of her progeny.

10. The average normal person in India (in the tropics) cannot be called, in my personal opinion (and I have evidence medical and otherwise), a *woman* fit enough to give an intelligent consent to cohabitation until and unless she has attained the age of 17 or 18. There may be some case (which I would call as abnormal) or cases where a girl may be fit earlier for cohabitation.

In the interest of public good, and to be on the safe side from a larger point of view, I would strongly prefer the age of "18" as the earliest for consummation of marriage.

11. Owing to a serious study during the last ten or twelve years of the subject of Sex-psychology in its relations to Heredity, I have seen, known and read of innumerable cases where the consequences of early consummation have been *disastrous*, *ruinous*, and in many cases, *fatal*.

12. Not only that I consider that early consummation and early maternity as mainly responsible for high maternal and infantile mortality, but I can prove by facts and figures, not only in India but all over the world in the past and at the present moment, that the practice of early consummation definitely undermines the intellectual, physical, and moral stamina of any given human being or race, whether Occidental or Oriental.

13. I cannot see any appreciable change in these provinces whether amongst the lower classes, or the so-called educated people in the Province.

14. The poor and helpless women have no chance or say in the matter, principally because the men rule supreme in their houses, being earning members and thus independent, and the woman being at the mercy of the male. This province is particularly backward, and needlessly conservative and orthodox.

As mentioned before in answer No. 7, it is a matter of *Custom* under the cloak of religion, and, as a result, the general feeling amongst the women-folk of the lower classes, and in some cases in the higher classes also, encourages the performance of early marriage and early consummation for fear of 'social ostracism', and other social inconveniences and penalties. In many cases the inconveniences are purely imaginary.

15. Many difficulties arise to save the skins of the sinners. Many cases get wiped off for want of "*evidence*". And most of them are legal '*constructions*' and '*obstructions*' in the path of Justice from the point of "larger issues".

13. I think it would greatly facilitate the progress of the reform in view.

17. I would leave the question of punishment regarding extra-marital or marital offences in the hands of legal luminaries who honestly nurse the good and the future of this country at heart.

18. The answer is as above.

19. The same as above.

20. I think that penal legislation fixing a higher Age of Consent for marital cases would be a progressive step. Apart from the alternative being in consonance with public opinion in these parts of the country, I consider that in the case of an ignorant populace, those who can think ahead of the times should shoulder the responsibility of bringing about certain essential social changes by legislation where the general mass of people lack that sense.

21. As an inevitable alternative I would prefer the attainment of the object in view by social pressure by means of education and social propaganda to that of penal legislation. For in that way the people in this country can at least save themselves the ignominy of the charge of "*general unfitness for self-determination or Self-Government*".

Written Statement, dated the 17th January 1929, of Mr. K. L. GORE, Allahabad.

I have had occasion to attend the deliberations of your committee day before yesterday and yesterday, which has inspired me to write to you this small memorandum.

Introduction.—I am a Maharashtra Brahmin domiciled in the United Provinces, aged 29, in a Subordinate Service, in the office of the Director of Audit, United Provinces, Allahabad. I belong to a very orthodox family. There are about 150 Maharashtra families in Allahabad and an equal number in Cawnpore and a very considerable number in Jhansi and Benares. I happen to be the first domiciled Maharashtra of these provinces to revolt against orthodoxy and marry a widow of my community at Bombay under the auspices of the Bombay Presidency Social Reform Association on 30th June 1925; consequently, as was natural, I had to suffer a certain amount of social ostracism and give up my relations and friends. This indeed is my title to speak on the subject of social reform.

Evil of child marriages.—My experience is of course limited to a very great extent and in the instances I cite below I refer only and purely to my relations :—

- (1) A girl born in 1906, married in 1918, became a mother in 1920 at 14 years of age. The baby is epileptic and the mother weak.
- (2) Another girl born in 1909 married in 1922, became a mother in December 1923. The baby was extremely weak and died after 10 days. The mother also followed her issue after 3 months of puerperal fever.
- (3) A third girl born in 1906, married in 1919, became a mother in 1921. The baby died after six days, though born healthy.

In all these instances the consummation took place after puberty.

Minimum age of marriage.—I would advocate 18 for girls and 21 for boys but should be satisfied at 16 and 21 respectively. I do not believe it would be possible for a law of Age of Consent to work, without very great interference in private affairs, satisfactorily, and therefore I am for fixing the minimum marriageable age by law.

Punishment.—I should strongly advocate a graduated scale of punishment; e.g., where the girl is below 12 say, three years rigorous imprisonment.

Between 12 and 14 2 years and above 14 to the minimum that may be fixed, one year. I would have no fine as that would simplify evasion for the rich. Then again I would exempt the mothers of the bride and the bridegroom from penalty and also the father or guardian of the boy if the bridegroom is above 21, for then he would be of age to be held solely responsible for his acts. This would also encourage young men to oppose, for fear of the penalty, any overtures about matrimony with a young girl from their guardians—a spirit that I wish the youngmen had possessed.

As an exception I would exempt the bride and the bridegroom from punishment if they both happen to be minors under the law to be enacted and would advocate penalty for the parents. This, it would be agreed, is fair to the minors while the punishment of their guardians would give them a chance of undoing the evil of early marriage by late consummation as a penance.

Process of prosecution.—The prosecution to be ordered by a first class Magistrate on a complaint duly filed by a relative, a social organisation or a neighbour, with full details and names of witnesses the complainant could produce to substantiate his complaint.

It may also be open to a Justice of the Peace, a District and Sessions Judge or a member of a legislature through the District Magistrate to order investigations without a complaint being filed.

Religious aspect.—I have not studied much of the religious aspect of the question, but from the little study that I have made I gather that there are injunctions in our Shastras to support both the views—moreover whether approved by Shastras or not I would advocate adoption of higher ages for marriage on purely physical and social grounds.

I trust the committee will very kindly consider these suggestions.

Notes on Visits to Villages by the Age of Consent Committee, Allahabad.

At a meeting convened at the *Purdah* Club, Allahabad, Mrs. Nehru and Dr. Beadon, met about 24 ladies. In reply to questions the following information was elicited.

1. The marriage age in villages varies from 6—12 years.

The latest age is 12.

One lady saw marriage at 4 years.

One lady saw marriage at 7 years.

One lady saw marriage at 9—10 years.

Consanguinity is never before puberty, generally it is about 12—13 years. The girl is sent when she is big enough, this may be before, but is generally after puberty.

One lady who has worked in the villages says that a number of the women have lost several of their children and when asked the reason for such loss say "oh because I was so young I could not care for them properly".

Motherhood—

One lady has seen a mother at 12 years. The woman was very weak and delicate—child also. The woman was daughter of the lady's servant.

One lady saw a mother at 13. Mali caste, the baby was very weak and delicate, mother all right.

One lady saw a mother at 14. Fate unknown.

One lady saw one mother at 14, well-to-do, both mother and child well.

One lady saw one mother at 15, well-to-do, mother well, child died after 2 days.

These cases occurred this year.

She is a doctor, has not seen many young mothers. In *Towns* marriage is not so early as in villages. Generally the latest age is 14—15 years. At 15—16 among Kayasthas and sometimes even 18—19. Among Kankjub Brahmins the latest marriage age is 14 years. For past 8 years they disregard pre-puberty marriages. Out of 300 families of this caste only one family has a girl of 10 years married, and only this one family believes in pre-puberty marriages.

Among Bengali Brahmins in Allahabad marriage is now later, one lady married her three girls at 15 years. There is no concealment of puberty.

All ladies were unanimously of opinion that legislation in this matter is essential, propaganda alone will not effect a remedy.

They desire that the marriage age be fixed at 16 years. The villagers will have to accept this age. As regards punishment all except one advocate fine only, one lady desired imprisonment. Two ladies ask that if marriage age be fixed provision be made that exemptions might be granted in special deserving cases.

They are of opinion that Age of Consent legislation alone is ineffective. Marriage age should be fixed.

